SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 491

BOARD OF SUPERVISORS OF SUFFOLK COUNTY, NEW YORK, ET AL., APPELLANTS,

vs.

I. WILLIAM BIANCHI, JR., ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

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[fol. 1]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

62C 821

I. William Bianchi, Jr. and
Quentin B. Sammis, Plaintiffs,

—against—

Evans K. Griffing, William P. Bain, Lester M. Albertson, William J. Leonard, Stephen F. Meschutt, Ralph J. Osgood, Charles R. Dominy, Robert J. Flynn, Arthur M. Cromarty and Thomas J. Harwood; constituting the Board of Supervisors of Suffolk County, New York, Defendants.

Complaint—Filed July 27, 1962

Plaintiffs, complaining of the defendants, respectfully allege as follows:

For a First Cause of Action

First: The plaintiffs bring this action pursuant to the Civil Rights Act, United States Code Title 42, Sections 1983 and 1988. This Court has original jurisdiction of the action by virtue of United States Code Title 28, Sections 1343(3) and 1343(4). Relief hereunder is also sought pursuant to the Federal Declaratory Judgment Act, United States Code Title 28, Sections 2201 and 2202.

Second: Under United States Code Title 28, Section 2281 *et seq.*, provision is made for the convening of a three-judge district court, where the relief requested is an interlocutory or permanent injunction restraining the enforcement, operation or execution of any state statute by restricting the action of any officer of such state in the enforcement or execution of such statute. Plaintiffs seek such relief and request the convening of a three-judge court.

[fol. 2] Third: The plaintiffs are citizens of the United States and of the State of New York; taxpayers of the State of New York and of Suffolk County in the State of New York, hereinafter referred to as Suffolk County; and qualified voters entitled to vote for supervisors in the townships of their respective residence and for all elective officials voted upon by all of the voters of Suffolk County. Plaintiff I. William Bianchi, Jr., resides in the Town of Brookhaven, Suffolk County; plaintiff Quentin B. Sammis resides in the Town of Huntington, Suffolk County. The plaintiffs jointly and severally bring this action in their own behalf and in behalf of all other persons, citizens, taxpayers, and voters in Suffolk County similarly situated.

Fourth: The defendants are the Supervisors of the townships in Suffolk County of their respective residence as follows: defendant Evans K. Griffing is the Supervisor of, and resides in, the Township of Shelton Island; defendant William P. Bain is the Supervisor of, and resides in, the Township of East Hampton; defendant Lester M. Albertson is the Supervisor of, and resides in, the Township of Southold; defendant William J. Leonard is the Supervisor of, and resides in, the Township of Riverhead; defendant Stephen F. Meschutt is the Supervisor of, and resides in, the Township of Southampton; defendant Ralph J. Osgood is the Supervisor of, and resides in, the Township of Smithtown; defendant Charles R. Dominy is the Supervisor of, and resides in, the Township of Brookhaven; defendant Robert J. Flynn is the Supervisor of, and resides in, the Township of Huntington; defendant Arthur M. Cromarty is the Supervisor of, and resides in, the Township of Babylon; and defendant Thomas J. Harwood is the Supervisor of, and resides in, the Township of Islip; and the defendants together constitute the Board of Supervisors of Suffolk County, hereinafter referred to as the Board of Supervisors.

[fol. 3] Fifth: Suffolk County is subdivided into ten separate and distinct townships, the citizens of which elect

a supervisor who is the chief executive of the government of his township, and who also represents all of the citizens of his township as a member of the County Board of Supervisors wherein he functions exclusively as a county legislator, county officer, and state officer.

Sixth: The defendants in their collective capacity as the Board of Supervisors of Suffolk County and pursuant to Sections 201 through 208 of Chapter 278 of the Laws of New York 1958, known as, and hereinafter referred to as, the Suffolk County Charter, are "the legislative and policy determining body of the county"; have and exercise "all the powers and duties of the county" together with all the powers and duties which have heretofore been, or which may hereafter be, conferred or imposed upon boards of supervisors by all laws enacted by the Legislature of the State of New York applicable to Suffolk County; and, in addition thereto, specifically are required by the Suffolk County Charter to exercise, and do exercise the following powers, among others:

(1) All powers of legislation as provided in article nine of the constitution of the state and the Suffolk County Charter;

(2) To adopt, amend and repeal local laws as provided by law and for the purpose of making effective any of the provisions of the Suffolk County Charter and to carry out all powers conferred upon the county or the board of supervisors by any other law;

(3) Except as otherwise provided in the Suffolk County Charter, to create, organize, alter and abolish departments, commissions, bureaus, offices and employments and/or transfer their functions and duties not inconsistent with said charter;

(4) Except as otherwise provided in the Suffolk County [fol. 4] Charter and subject to the constitution and general laws of the state, to fix the compensation of all officers and employees of the county paid from county funds, except members of the judiciary;

(5) To fix the amount of the bond to be given by any official or employee of the county, conditioned on the faithful performance of his duty, and make the premiums of such bonds a county charge;

(6) To make appropriations, levy taxes and incur indebtedness for the purpose of carrying out any of the powers and duties conferred or imposed on the county or any officer, board, commission or other authority thereof, by the Suffolk County Charter or otherwise by law;

(7) To employ such legal, financial or other advisors as it may from time to time deem necessary for the performance of any of its functions.

Seventh: The defendants, in their collective capacity as the Board of Supervisors of Suffolk County, pursuant to various laws and statutes, and by long-standing custom and practice in the State of New York, are required to exercise, and do exercise, certain powers in addition to those set forth in paragraph Sixth hereof, as officers of, and for and in behalf of, the State of New York.

Eighth: Each defendant without reference to the number of persons in his township whom he represents, in his capacity as a member of the Board of Supervisors casts but one vote in exercising the powers set forth in paragraphs Sixth and Seventh hereof, in accordance with Section 203 of the Suffolk County Charter, which provides as follows:

§203. Voting; quorum

Each supervisor shall have one vote. A majority of the whole number of the members of the board shall constitute a quorum. Except as otherwise provided by law, local laws and resolutions shall be adopted by a vote of not less than a majority of the total membership of the board. In case of a tie vote on any matter

[fol. 5] at any meeting of the board of supervisors the county executive shall have a casting vote, provided, however, that he shall not have a vote as to any local law or resolution which provides a new form of government, for the county or changes the voting strength of the supervisors or which changes the location of the county seat.

Ninth: The populations of the townships of Suffolk County for the years 1960, 1950 and 1940, as set forth in the United States Census of Population 1960, Number of Inhabitants, New York Final Report (P.C. [1] 34A) were respectively as follows:

	1960	1950	1940
Shelter Island	1,312	1,144	1,073
East Hampton	8,827	6,325	6,529
Southold	13,295	11,632	12,046
Riverhead	14,519	9,973	8,922
Southampton	26,861	16,830	15,295
Smithtown	50,347	20,993	13,970
Brookhaven	109,900	44,522	32,117
Huntington	126,221	47,506	31,768
Babylon	142,309	45,556	24,297
Islip	172,959	71,465	51,182

Tenth: Upon information and belief, the populations of the townships as of January 1, 1962, were respectively as follows:

Shelter Island	1,367
East Hampton	9,602
Southold	13,977
Riverhead	15,281
Southampton	29,654
Smithtown	60,863
Brookhaven	122,367
Huntington	138,656
Babylon	155,459
Islip	191,280

[fol. 6] Eleventh: Because of the gross disparity in population among the townships in Suffolk County, as set forth in paragraphs Ninth and Tenth, the present arrangement under and by virtue of which each member of the Board of Supervisors casts one vote in functioning both as a county and a state official, results in an arbitrary impairment of the votes of the plaintiffs and of all those similarly situated by means of an invidiously discriminatory geographic classification, which deprives plaintiffs and all others similarly situated of liberty and property without due process of law and of the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

Twelfth: In addition to arbitrarily impairing the votes of those situated as plaintiffs, as set forth in paragraph Eleventh, the present arrangement of representation arbitrarily exalts the voting strength of persons residing in the less populous and rural townships with no justification other than the present invidiously discriminatory geographic classification. Each defendant, in casting one vote as a member of the Board of Supervisors, represents the following approximate percentage of the total population of Suffolk County:

Griffing (Shelter Island)	1/5%
Bain (East Hampton)	1 1/2%
Albertson (Southold)	2%
Leonard (Riverhead)	2 1/4%
Meschutt (Southampton)	4%
Osgood (Smithtown)	8%
Dominy (Brookhaven)	16%
Flynn (Huntington)	19%
Cromarty (Babylon)	21%
Harwood (Islip)	26%

Defendants Griffing, Bain, Albertson, Leonard and Meschutt, representing approximately 9.95% of the county [fol. 7] population, having five votes on the Board of Super-

visors, can prevent passage by the Board of measures favored by 91% of the county population, respresented by defendants Osgood, Dominy, Flynn, Cromarty and Harwood, who also have only five votes. If defendant Osgood votes with the five defendants first named, approximately 18% of the county population, represented by six votes on the Board of Supervisors, can enact legislation not favored by approximately 82% of the population; all of which is in violation of the Fourteenth Amendment of the Constitution of the United States.

Thirteenth: The present discriminatory arrangement is contrary to the prevailing philosophy of government in the United States and all Anglo-Saxon jurisdictions, in which the legislative body has the power to make laws only because it has the power and duty to represent the people.

Fourteenth: The arbitrary impairment of the votes of the plaintiffs and of all those similarly situated, as hereinbefore set forth results in an unjust and unequal application of funds available to Suffolk County to projects not favored by more than a small minority of the Citizens of the United States residing in the county. The revenues available to be disbursed and allocated by defendants on behalf of the county, in their capacity as the Board of Supervisors derive in the main from two sources: (1) from taxes levied by the county upon real property in the county; and (2) from the State of New York, which raises such revenues by levying and continuing to levy taxes upon the incomes of citizens of the United States residing in the State of New York, including Suffolk County. The unjust and unequal application of these funds, to which plaintiffs and those similarly situated are required to, and do, contribute, in the form of real property tax to Suffolk County and an income tax to the State of New York, constitutes taxation without representation.

[fol. 8] Fifteenth: The arbitrary impairment of the votes of the plaintiffs and those similarly situated has become more invidiously discriminatory since January 1, 1962, and

continues to become more discriminatory with the passage of time, as the result of an ever-increasing population influx into the townships of Babylon, Brookhaven, Huntington, Islip and Smithtown, while the populations of the other five townships have remained relatively constant. The unequal growth of the five townships mentioned above, comprising the western portion of the county, is the result in part of their geographic proximity to heavily populated Nassau County and the City of New York. The five western townships, already suburban in character, are rapidly tending to become urban, while the five eastern townships remain rural and agricultural in nature. As alleged in paragraph Tenth, the total population of the five western townships as of January 1, 1962, was 668,625, while the total population of the five eastern townships was 69,881.

Sixteenth: The defendants and their predecessors in office have complied, and it must be presumed that they will continue to comply, with the provisions of the Suffolk County Charter until such time as such provisions shall be declared by competent authority to be invalid. Defendants or their successors in office, unless prevented by a court of competent jurisdiction, must perform their duties as they and their predecessors in office have performed them since enactment of the Charter, unless and until such court should declare the voting provision contained in Section 203 of the Charter to be invalid; and until such time as such voting provision is declared invalid it must be presumed that the [fol. 9] inequity and discrimination alleged in this complaint will continue.

For a Second Cause of Action

Seventeenth: Repeat and reiterate each and every allegation in paragraphs First through Sixteenth hereof with the same force and effect as if set forth at length herein.

Eighteenth: The arbitrary impairment of the votes of the plaintiffs and of those similarly situated by means of the invidiously discriminatory geographic classification in vio-

lation of the Fourteenth Amendment of the Constitution of the United States, as hereinbefore set forth, was created by the affirmative act of the legislature of the State of New York in its enactment of Section 203 of the Suffolk County Charter.

Nineteenth: Section 203 of the Charter was deliberately contrived to deprive the plaintiffs and others similarly situated of their liberty and property without due process of the law and the equal protection of the laws, as prescribed by the Fourteenth Amendment of the Constitution of the United States. The purposeful plan is evidenced by that part of Section 203 which deprives the Suffolk County Executive, who is elected by the entire voting population of the county, of tie-breaking vote as to any law or resolution of the Board of Supervisors which "changes the voting strength" of the defendants.

Wherefore, plaintiffs pray

(1) That the Court take jurisdiction of this case;

(2) That a special three-judge Court be convened to hear and determine the case as provided by United States Code Title 28, Sections 2281 *et seq.*;

(3) That judgment be granted for such declaratory and injunctive relief as may be proper to assure the plaintiffs and all others similarly situated of due process and of equal protection of the laws, as follows:

[fol. 10] (i) Declaring void and invalid, as being violative of the Fourteenth Amendment of the Constitution of the United States, so much of Section 203 of the Suffolk County Charter as provides that the defendants shall each have one vote as members of the Suffolk County Board of Supervisors;

(ii) Declaring void and invalid, as being violative of the Fourteenth Amendment of the Constitution of the United States, the present practice by virtue of which each defen-

dant casts one vote as a member of the Suffolk County Board of Supervisors;

(iii) Enjoining the defendants from acting in their collective capacity as the Board of Supervisors of Suffolk County unless and until a constitutional change in their relative voting strength is duly made and adopted pursuant to applicable law, except that said defendants might act insofar as is necessary to initiate or effectuate any such change;

(iv) That the Court retain jurisdiction of this action to review any such change and to insure to the plaintiffs the rights guaranteed them by the Fourteenth Amendment of the Constitution of the United States;

(v) Granting plaintiffs such other, further or different relief as may seem just or proper in the premises.

Frederic Block, Office & P. O. Address, 305 Patchogue Road, Port Jefferson Station, New York;

and

Cahn and Cahn, by: Richard C. Cahn, Office & P.O. Address, 425 New York Avenue, Huntington, N. Y.

Attorneys for Plaintiffs.

[fol. 10a] *Duly sworn to by I. William Bianchi, Jr., jurat omitted in printing.*

[fol. 13]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[Title omitted]

NOTICE OF MOTION AND MOTION TO DISMISS THE COMPLAINT —Filed October 22, 1962

To:

Frederic Block, Esq., 305 Patchogue Road, Port Jefferson Station, New York;

Cahn and Cahn, Esqs., 425 New York Avenue, Huntington, New York,

Attorneys for the Plaintiffs.

Please Take Notice that the undersigned will move this Court at a term for motions at a Motion Part, United States Court House for the Eastern District of New York, 271 Washington Street, Brooklyn, New York, on the 7th day of November, 1962, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order dismissing the complaint herein without assembling a three-judge court on the ground

1) no substantial federal question is raised;

2) the Court lacks jurisdiction over the subject matter;

[fol. 14] 3) that the complaint fails to state a claim upon which relief can be granted;

4) the Court should abstain from exercising its equitable jurisdiction so far as it would otherwise consider the constitutionality of §203 of the Suffolk County Charter, pending an authoritative interpretation by the courts of the State of New York of this legislation;

[File endorsement omitted]

5) the Court should abstain from exercising its equitable jurisdiction in view of the recent rejection of a constitutionally provided call for a constitutional convention and the even more recent approval by the electorate of Suffolk County of the Suffolk County Charter, such rejection and approval, respectively, having together constituted a political remedy and the exercise thereof;

6) of failure to join an indispensable party, the State of New York or the legislature thereof;

and for such other and further relief as the Court may deem just and proper.

Dated: Riverhead, New York
October 17, 1962

George W. Percy, Jr., Suffolk County Attorney, Attorney for the Defendants, Office and Post Office Address, Suffolk County Center, Riverhead, New York.

[fol. 14a] Affidavit of Service by Mail (omitted in printing).

[fol. 15]

United States District Court

Eastern District of New York

[Title omitted]

Affidavit of Ruth Buys in Support of Motion
—Filed October 22, 1962

State of New York,
County of Suffolk, ss.:

Ruth Buys, being duly sworn, deposes and says:

I am the duly appointed and acting Deputy Clerk of the Board of Supervisors of Suffolk County and I have been appointed and acting in that capacity for upwards of 9 years.

[File endorsement omitted]

As a duty in that office and among other things I attend meetings of the Board of Supervisors, and under the supervision and direction of the Clerk of the Board, keep and preserve the minutes and records of the meetings, prepare indexes of its action and perform other duties related thereto.

I am familiar with the official action of the Board.

This affidavit is made to summarize the action of the Board taken at its meetings in the year 1961. In 1961 the Board was divided politically, five of the members being Republican and five Democrat. In all of the other years [fol. 16] in which I have served in the office of the Clerk of the Board, it has been controlled by a Republican majority. The year 1961, then, when the Board was divided, is a year when division in voting would naturally be most pronounced.

The following table shows the voting on the 505 resolutions that were adopted by the Board in 1961:

For	Against	Not Voting	Absent	No. of Resolutions
10	0			281
9	1			11
8	2			2
7	3			3
6	4			1
6	5			10 (*)
9	0		1	139
8	0		2	16
7	0		3	32
8	1		1	2
8	0	1	1	2
7	0	3		1
6	3	1		1
6	3		1	2
7	2		1	1
5	3		2	1
				505

(*) tie vote of Board, Executive voted

In addition to eight votes in which the Board was divided, there was one case in which the vote was 5–3 with two absent; in two cases the vote was 5–4 with one abstaining. In the latter two cases the abstention was ruled a negative vote and the Executive voted to provide a majority.

Those 11 votes had to do with the following matters:

3 had to do with the appointment of county officers;

3 had to do with creating, designating and abolishing positions;

1 had to do with the compensation of officers;

2 had to do with authorization of payments for services rendered;

1 had to do with Local Law providing for the quarterly allotment of expenditures, and

1 had to do with a certain parcel of property on Fire Island.

[fol. 17] The one 6–4 vote related to the establishment of a General Services Office for County Center departments.

The one 6–3 vote with one not voting concerned participation in a State Health Insurance Plan; the one 6–3 vote with one abstaining had to do with extending educational leave to case workers in the Department of Public Welfare.

There were three 7–3 votes:

one creating a position in the Department of Public Works;

one a bond resolution for property maps, and

one concerned policy on airports.

In 471 of the 505 resolutions there was no negative vote.

There was no vote in which there was a division based solely on the particular interests of the four or five more populated towns, or vice versa.

I have read the complaint in this action and particularly paragraph "Fourteenth" thereof, and with particular reference to that paragraph I submit, based on the record of the resolutions adopted by the Board, not only in 1961, but generally, that there is *no* "unjust and unequal application of funds available to Suffolk County to projects not favored by more than a small minority of the citizens of the United States residing in such county".

The July 23, 1962, motion of the Supervisor of the Town of Huntington in connection with a local law that would have provided a weighted vote, which motion was not seconded, is the only action of the Board or any member thereof which I can recall that specifically raised the question of the disparity in population between the various towns of the county.

[fol. 18] On February 7, 1958, the Board adopted the following resolution:

> "RESOLVED that the bill for a Suffolk County Charter as prepared and submitted to this meeting be approved, and that it be sent to Senator Barrett and the Assemblymen of the county for introduction in this session of the legislature, with the request that they use every effort to obtain its passage on enactment."

The resolution was offered by Supervisor Cromarty and carried by a 6–4 vote; the four opposing the resolution were the supervisors from the rural low-population eastern towns of Shelter Island, Southold, Southampton and Riverhead.

By the same vote on February 24, 1958, a home rule resolution, which was required under the New York State Constitution (Article IX, §1(b)], was adopted as follows:

> "BE IT RESOLVED that the Suffolk County Board of Supervisors hereby requests the enactment of legislation as set forth in Senate Bill Printed No. 3131, Int. No. 2921; Assembly Printed No. 3711, Int. No. 3552 entitled 'AN ACT to provide an alternative form of government for

Suffolk County to be known as "The Suffolk County Charter.'"

The legislation referred to became Chapter 278 of the Laws of 1958.

Ruth S. Buys.

Sworn to before me this 15th day of October, 1962.

Cornelia C. Keogh, Notary Public, State of New York, No. 52-2093890, Qualified in Suffolk County, Term Expires March 30, 1963.

[fol. 19]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[Title omitted]

AFFIDAVIT OF ARTHUR M. CROMARTY IN SUPPORT OF MOTION—Filed October 22, 1962

State of New York,
County of Suffolk, ss.:

Arthur M. Cromarty, being duly sworn, deposes and says:

I am one of the defendants in this action and am the chairman of the board of supervisors of Suffolk County.

This affidavit is made in support of the defendants' motion to dismiss the complaint.

The complaint substantially sets forth the numerical facts.

On the basis of the official 1960 census figures it would take 132 voters in the Town of Islip to equal the vote of one [fol. 20] person in the Town of Shelter Island. This is an extreme example.

[File endorsement omitted]

Acknowledging that the supervisors are the legislative body in the county, it would be the height of absurdity not to admit that so far as direct representation is concerned, there exists as to many voters a degree of discrimination.

It would be equally absurd not to admit that this type of discrimination is rampant throughout the political subdivisions of the 50 states.

Whether such discrimination is invidious is for the Court to determine.

The purpose of this affidavit is to set forth facts designed to assist the Court in that determination. Many of them are matters of which the Court may properly take judicial notice.

The next page is a chart of certain facts as to population of the towns in Suffolk County, area, assessed valuation, special districts. A lack of pattern is at once strikingly noticeable. With the exception of Shelter Island, which ranks tenth in population, area and valuation, no other town has two identical figures for rank.

Analysis of these figures and comment on their significance is left for the memorandum of counsel and the conclusion of the Court.

The tremendous percentage of change 1950-60 in population (one of the highest in the country for that decade) is, above the normal birth rate, due to people moving into the county as a part of the trend from urban to suburban which has been so characteristic of the past decade and a half.

Town	1960 Population	% Change 1950-60	Population as a % (*)	Population Rank	Area Square Miles	Area as a %	Area Rank	Full Real Property Valuation	% Valuation (*)	Valuation Rank	# of non-school dists. 1960
BABYLON	142,309	212.38	21.35	2	51.20	5.6	8	552,609,416	18.0	3	31
BROOKHAVEN	109,900	146.84	16.48	4	259.60	28.5	1	541,921,481	17.6	4	90
EASTHAMPTON	8,827	39.56	0.94	9	70.92	7.8	5	103,192,800	3.4	8	13
HUNTINGTON	126,221	165.69	18.93	3	99.12	10.8	4	674,299,426	21.6	1	48
ISLIP	172,959	142.02	25.94	1	102.27	11.2	3	556,432,063	18.4	2	121
RIVERHEAD	14,519	45.58	2.17	7	67.86	7.5	6	98,320,584	3.1	9	25
SHELTER IS.	1,302	14.69	0.17	10	11.60	1.3	10	20,273,276	0.6	10	2
SMITHTOWN	50,347	139.83	7.56	5	54.06	5.9	7	193,932,958	6.3	6	29
SOUTHAMPTON	(**)27,095	60.99	4.02	6	145.08	15.9	2	223,770,164	7.2	5	26
SOUTHOLD	13,295	14.30	1.99	8	48.68	5.3	9	108,468,239	3.6	7	22
	666,784		99.55		910.39	99.8		3,073,220,407	99.8		

(*) approximate

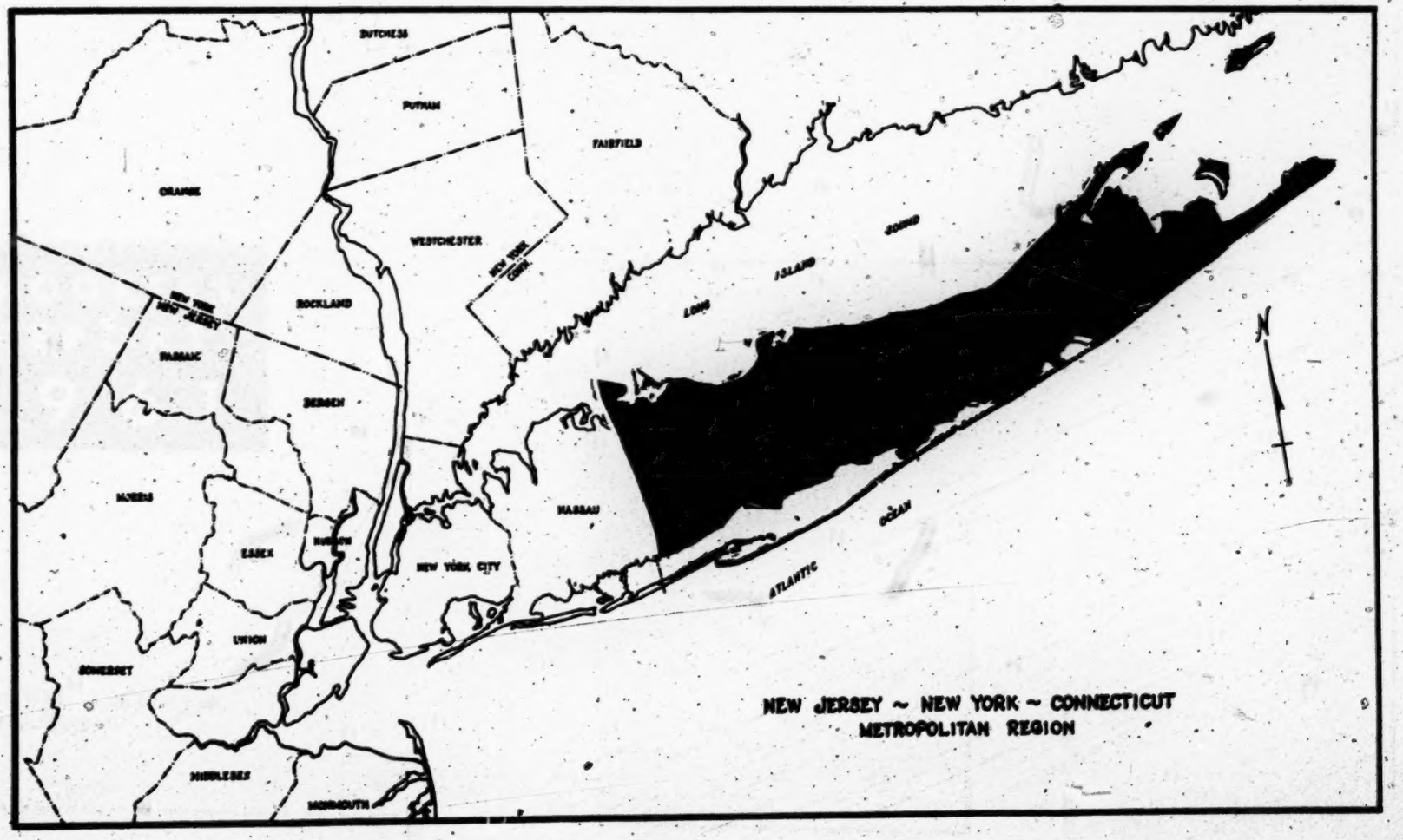
(**) complaint gives this figure 26,861

[fol. 22] Suffolk is the largest county in the metropolitan New York area, and its relation to that area is shown on the map on the following page. Its 986 square miles are only 63 square miles less than the area of the counties of New York, Kings, Queens, Nassau, Richmond, Bronx and Westchester combined. It has a population larger than many states and, comprising the easterly two-thirds of Long Island, has a tidal shore line of hundreds of miles.

[fol. 23]

Regional Location

Suffolk County with over 900 square miles of usable, desireable land comprises one-seventh of the entire New York Metropolitan region.



[fol. 23a]

COMMISSION
SETH A. HUBBARD—Chairman
LEWIS H. POMPER—Vice Chairman

Suffolk County Department of Planning

H. LEE DENNISON
County Executive

LEE E. KOPPELMAN
Planning Consultant

VETERANS MEMORIAL HIGHWAY
HAUPPAUGE, L. I., N. Y.

ANdrew 3-0700

March 1, 1962

Honorable H. Lee Dennison, County Executive
and the Members of the Suffolk County
Board of Supervisors,
Riverhead, New York

Gentlemen:

We take pleasure in submitting the annual progress report of the Suffolk County Planning Commission for the year 1961.

The report briefly sets forth the activities and accomplishments during the year, and indicates what we believe to be primary future objectives.

Throughout the year we received your cooperation for which we are grateful. In addition, we received excellent cooperation from the Village and Town planning agencies in the County as well as assistance from the State.

We trust that our work and efforts will merit approval.

Respectfully submitted,

Seth G. Hubbard

Chairman
Suffolk County Planning Commission

SAH/IMD

PROGRESS
REPORT
1961

[fol. 24] There are 10 towns comprising the county; in each a supervisor is elected who becomes a member of the county board of supervisors.

There are 27 incorporated villages; 557 separate, tax-imposing and tax-spending agencies, including 21 common school districts, 53 union free school districts, 110 fire districts, and 133 light districts.

There are nearly 5800 miles of highways administered by some 35 separate jurisdictions.

These statistics are cited to indicate the extent to which there is the element of home rule throughout the county. They also serve to demonstrate that when the voters of any given town elect a supervisor they are doing much more than electing someone for the sole purpose of legislating at the county level of government. The supervisors are first of all the chief legislators and executives at the town level of government and are concerned with a myriad of governmental units and local problems.

This multiple function of the supervisors distinguishes them, it is obvious, from representatives chosen as legislators to the United States Congress or to the law-making bodies of the several states. This distinction, it is submitted, is of great importance in this case.

[fol. 25] Originally there were 12 counties in New York State, created by an act of the colonial assembly in 1683. Derived from the English shire, and older even than the crown, they had judicial rather than legislative significance at first. As they gradually took on other functions, and as the northern and western wilderness was converted into civilization, with the help of the canals and railroads, boundaries and names were changed by the colonial assemblies, and the legislature after the first state constitution was adopted in 1777 during the revolution.

Counties have never enjoyed constitutional protection from legislative act; their corporate existence is completely within the control of the legislature. All but two of them

not in existence in 1777 were created between that date and 1854; Nassau was created in 1899 and Bronx in 1914.

The pertinent constitutional provisions are found in Article IX. Excerpts of that article, with historical notes at the end of the sections, follow on the next four pages.

[fol. 26] Article IX—Local Governments

§1. [Counties; organization and government; restrictions on legislature with respect to laws affecting]

(a) There shall be in each county outside the City of New York a board of supervisors or other elective governing body, to be composed of such members and elected in such manner and for such period as is or may be provided by law. In the city of New York the powers and duties of a board of supervisors may be devolved upon the council or other legislative body of the city.

(b) The legislature shall provide by law for the organization and government of counties. No law which shall be special or local in its terms or in its effect, or which shall relate specially to one county only, shall be enacted by the legislature unless in its application, if any, to counties outside the city of New York it complies with the requirements of subdivision (c) of this section and in its application, if any, to counties within the city of New York it complies with the requirements of subdivision (d) of this section.

(c) The legislature shall not pass any such law affecting a county or counties outside the city of New York unless

(1) such law applies alike to all such counties; or

(2) such law applies alike to all such counties which have not adopted alternative forms of government pursuant to the provisions of section two of this article and, if it applies also to one or more of the counties which have adopted such alternative forms, meets the requirements

of paragraph (3) of this subdivision with regard to each of such counties; or

(3) such law is requested by the board of supervisors or other elective governing body of each county to be affected outside the city of New York and, in any county affected which has an elective county executive officer under an alternative form of government, the request is either concurred in by such executive officer or, in the absence of such concurrence within ten days of its approval by the governing body, is reconsidered and passed by at least a two-thirds vote of all of the members of such body; or

(4) the legislature receives a certificate of necessity from the governor reciting the facts which in his judgment require the passage of such law and subsequently approves it with the concurrence of two-thirds of the members elected to each house.

(d) The legislature shall not pass any such law affecting a county or counties within the city of New York unless

(1) such law applies alike to all counties in the state or to all counties which have not adopted alternative forms of government pursuant to the provisions of section two of this article; or

(2) such law is requested by the council or other legislative body of the city upon which the powers and duties of a board of supervisors are devolved for the counties within the city and, if the city has a mayor or other elective chief executive officer, is either concurred in by such officer, or, in the absence of such concurrence within ten days of its approval by the legislative body, is reconsidered and passed by at least a two-thirds vote of all of the members of such body; or

[fol. 27] (3) the legislature receives a certificate of necessity from the governor reciting the facts which in his judgment require the passage of such law and subsequently

approves it with the concurrence of two-thirds of the members elected to each house.

(e) The legislature may authorize boards of supervisors or other elective governing bodies of two or more counties to provide by agreement for the discharge within the territorial limits of such counties or parts thereof of one or more governmental functions. As amended and approved Nov. 4, 1958, eff. Jan. 1, 1959.

§2. [Counties; alternative forms of government for; effect of adoption thereof]

(a) The legislature shall provide by law alternative forms of government for counties outside the city of New York and for the submission of one or much such forms of government to the electors residing in such counties.

(b) The legislature shall also, on or before July first, nineteen hundred fifty-nine, confer by general law upon all counties outside the city of New York power to prepare, adopt and amend alternative forms of county government, in accordance with procedure which the legislature shall provide and may from time to time by general law amend and subject to such limitations, including limitations on powers specified in this section, as the legislature may by general law from time to time impose.

(c) No alternative form of government shall become operative in any such county unless and until adopted at a general election held in such county by receiving a majority of the total votes cast thereon (1) in the area of the county outside of cities and (2) in the area of the cities in the county, if any, considered as one unit, and if any such form of government provides for the transfer of any function of local government to or from the villages of the county, or any class thereof, it shall not take effect with respect to such transfer unless the transfer, or the form of government containing it, shall also receive a

majority of all the votes cast thereon in all the villages so affected considered as one unit.

(d) Any such form of government shall set forth the structure of the county government and the manner in which it is to function. Any such form of government may provide for the appointment of any county officers or their selection by any method of nomination and election, or the abolition of their offices, and may also provide for the exercise by the board of supervisors or other elective governing body of any powers of local legislation and administration and the transfer of any or all of the functions and duties of the county and the cities, towns, villages, districts and other units of government contained in such county to each other or (if authorized by the legislature) to the state, and for the abolition of offices, departments, agencies or units of government when all of their functions are so transferred without regard to the provisions of this article or any other provisions of this constitution inconsistent herewith.

(e) If under an alternative form of government the board of supervisors be abolished, the powers and duties of the board of supervisors as prescribed by the constitution or by statute, if not provided for by such form of government shall devolve upon the elective governing body of such county.

(f) After the adoption of an alternative form of government by a county pursuant to this section, no law enacted pursuant to subdivision (b) of section 1 hereof which does not apply alike to all counties outside the city of New York and which in its application to such county [fol. 28] abolishes or creates an elective office, changes the term of office or reduces the salary of an elective officer during his term of office, abolishes, transfers or curtails any power of an elective officer, or changes the form or composition of the elective governing body of such county, shall become effective in such county until at least sixty

days after its final enactment. If within such sixty days electors of the county in number equal to at least five per centum of the total number of votes cast in the county for governor at the last gubernatorial election shall file a petition with the county clerk or corresponding officer of the county protesting against such law, it shall become effective in such county only if approved by the electors thereof at the next ensuing general election held at least sixty days thereafter, subject to the conditions provided in subdivision (c) of this section for the adoption of an alternative form of government.

(g) Nothing contained in this section shall be deemed to impair or restrict the existing power of the legislature to enact laws relating to the government of a county or the cities, towns, villages, districts or other units of government therein contained until the adoption of an alternative form of government by such county pursuant to the provisions of this section. Thereafter the power of the legislature shall be subject to the restrictions of subdivision (f) of this section. As amended and approved Nov. 4, 1958, eff. Jan. 1, 1959.

§3. [Existing laws to remain applicable]

Existing laws applicable to the government of counties and the cities, towns, villages, districts and other units of government therein contained shall continue in force until repealed, amended, modified or superseded by law or by a form of government and, except as provided in subdivision (d) of section 2 hereof, nothing contained in that section shall be construed to impair the provisions of sections 9, 11, 12, 13, 14 and 15 of this article. As amended and approved Nov. 4, 1958, eff. Jan. 1, 1959.

§4. [Further powers of local legislation and administration for counties]

The legislature shall, by general laws, confer upon the boards of supervisors, or other governing elective bodies,

of the several counties of the state such further powers of local legislation and administration as the legislature may, from time to time, deem expedient. As amended and approved Nov. 4, 1958, eff. Jan. 1, 1959.

* * * * * * *

§9. [Cities, towns and villages; election or appointment of officers; organization; powers to be restricted]

All city, town and village officers whose election or appointment is not provided for by this constitution shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this constitution and all officers whose offices may hereafter be created by law shall be elected by the people or appointed, as the legislature may direct.

It shall be the duty of the legislature to provide for the organization of cities, towns and incorporated villages, in [fol. 29] such manner as shall secure to such cities, towns and villages the powers granted to cities, towns and villages by this constitution and, subject to the provisions of this constitution, to restrict the power of taxation, assessment, borrowing money, contracting debts, and loaning the credit of such municipal corporations so as to prevent abuses in taxation and assessments and in contracting debt by such municipal corporations. The legislature may regulate and fix the wages or salaries and the hours of work or labor, and make provision for the protection, welfare and safety, of persons employed by the state or by any county, city, town, village or other civil division of the state, or by any contractor or subcontractor performing work, labor or services for the state or for any county, city, town, village or other civil division thereof. As amended and approved Nov. 4, 1958, eff. Jan. 1, 1959.

[fol. 30] Pursuant to the provisions of Article IX, §2(b), the legislature enacted Article 6-A of the County Law, which, as amended through the legislative session of 1962, follows on the next 5 pages.

[fol. 31]
§ 320

COUNTY LAW

Article 6-A—The County Charter Law

Sec.

320. Short title.
321. Applications.
322. Definitions.
323. Power to adopt, amend and repeal county charters.
324. Limitations and restrictions.
325. Legislative intent; construction.

§ 320. Short title

This article shall be known and may be cited and referred to as the "county charter law."

§ 321. Application

This article shall apply to each county of the state except a county in the city of New York.

§ 322. Definitions

For the purposes of this article, the following terms shall mean and include:

1. "Board of supervisors." The board of supervisors or other elective governing body of a county.

2. "Charter law." A local law providing, amending or repealing a county charter.

3. "County." A county of the state outside the city of New York.

4. "County charter." An alternative form of county government provided in accordance with section two of article nine of the constitution.

5. "Local law." A local law adopted by the board of supervisors of a county pursuant to this article and article six of this chapter or other statutes generally empowering the county to adopt local laws.

§ 323. Power to adopt, amend and repeal county charters

1. Subject to the restrictions in the constitution, in this article or in any other applicable law, the board of supervisors of any county as defined in section three hundred twenty-two of this article and including but not limited to a county which has heretofore adopted a charter enacted by the legislature shall have power to prepare, adopt, amend and repeal a charter law or laws providing a county charter for the county.

2. A county charter shall set forth the structure of the county government and the manner in which it is to function. Such charter may provide for the appointment of any county officers or their selection by any method of nomination and election, provided that there shall be an elective board of supervisors, the members of which shall be deemed county officers, which shall determine county policies and exercise such other functions as may be assigned to it.

3. Such a county charter shall provide for:

a. The exercise by the board of supervisors of the powers of local legislation and appropriation of the county.

b. The agencies or officers responsible for the performance of the functions, powers and duties of the county and of any agencies or officers thereof and the manner of election or appointment, terms of office, if any, and removal of such officers.

c. The equalization of real property taxes consistent with standards prescribed by the legislature.

4. Such a county charter may:

[fol. 32]

a. Assign executive or administrative functions, powers and duties to elective or appointive officers.

b. Empower an executive officer elected on a county-wide basis to veto actions of the board of supervisors, with provision for overriding of such vetoes by a specified percentage or percentages of votes of such board.

c. In accordance with subdivision (d) of section two of article nine of the constitution, provide for the transfer of any or all of the functions and duties of the county and the cities, towns, villages, districts and other units of government contained in such county to each other, and for the abolition of offices, departments, agencies or units of government when all of their functions are so transferred.

d. Provide for an administrative code which shall set forth the details of administration of the county government in harmony with the provisions of the county charter and may contain revisions, simplifications, consolidations, codifications and restatements of special laws, local laws, ordinances, resolutions, rules and regulations consistent with the county charter.

e. Provide for the termination of the terms of office of existing officers.

5. The board of supervisors by resolution may provide that a draft of a proposed county charter, or of an amendment or repeal thereof, shall be prepared under its supervision, the supervision of an officer or committee of the board, or by a charter commission appointed by or pur-

suant to such resolution. The county attorney or other legal advisor shall provide such assistance and cooperation as shall be required of him and shall have power to employ or retain special counsel and technical advisors and assistants within appropriations made available therefor.

6. Where a petition is filed with the clerk of the board of supervisors signed by electors of the county equal in number to at least ten per centum of the whole number of votes cast in the county for governor at the last gubernatorial election, asking that a charter commission be created by the board of supervisors and be composed and appointed as provided by the board of supervisors, and where the board of supervisors does not on its own motion create and appoint or provide for the appointment of such a charter commission within three months after such filing, the board of supervisors shall cause a proposition to be submitted to the electors of the county at the next general election occurring not less than five months after such filing, on the question of whether such a charter commission should be so established and appointed. The provisions of subdivision eight of this section shall apply to the preparation of the form of such proposition and its submission at such general election. If such proposition receives a majority of the votes cast thereon in the county at such general election, the board of supervisors within two months after such general election shall provide for the creation of such commission and its members shall be appointed within such two-month period. The provisions of subdivision five hereof, so far as applicable, shall apply to such charter commission.

7. A charter law

(a) providing a county charter, or

(b) proposing an amendment or repeal of one or more provisions thereof which would have the effect of transferring a function or duty of the county, or of a city, town,

village, district or other unit of local government, or class thereof, in the county, shall conform to and be subject to consideration by the board of supervisors in accordance with the provisions of law generally applicable to the form of and action on proposed local laws by the board of supervisors. The provisions of sections three hundred three, three hundred six and three hundred seven of this chapter shall be applicable to charter laws adopted pursuant to

[fol. 33]
§ 323

this article. If a county charter, or a charter law as described in item (b) above, is adopted by the board of supervisors, it shall not become operative unless and until adopted at a general election held in the county by receiving a majority of the total votes cast thereon (a) in the area of the county outside of cities and (b) in the area of the cities in the county, if any, considered as one unit, and if it provides for the transfer of any function of local government to or from the villages of the county, or any class thereof, it shall not take effect with respect to such transfer unless the transfer, or the county charter or charter law containing it shall also receive a majority of all the votes cast thereon in all the villages so affected considered as one unit. Such a county charter or charter law shall provide for its submission to the electors of the county at the next general election occurring not less than sixty days after the adoption thereof by the board of supervisors. Such a county charter or charter law may provide for the separate submission to the electors at such election of one or more variations of the provisions of such county charter. Any such variation may include, but shall not be limited to, proposed transfers of functions of local government to other units of local government or a class or classes thereof.

8. The form of each proposition submitted to the electors of a county pursuant hereto shall be prepared by the clerk of the board of supervisors with the advice of the county attorney or other principal legal advisor. They also shall prepare a brief abstract of the county charter or charter law so submitted. The form and abstract shall be transmitted to the board of elections of the county. The board of elections, at least twenty days before the election, shall send two or more copies thereof to the clerk of each city, town and village in the county to be made a public record in his office and shall cause a sufficient number of copies to be printed and made available to the electors at the time of registration or otherwise. In addition, such board of elections shall cause a sufficient number of copies to be delivered with the other election supplies and distributed to the electors at the election. The board of elections shall cause each such proposition to be submitted to the electors of the county in the manner provided in the election law and, so far as applicable, in section one hundred two of this chapter. Expenses incurred in connection with the submission of any proposition under this article shall be a charge against the county.

9. If two or more propositions having conflicting provisions receive the majorities required for adoption under this section at the same election, the proposition involved in each such conflict which receives the largest affirmative vote shall prevail to the extent of such conflict; but in all other respects such proposition shall be deemed adopted. Where a proposition submitted to the electors of a county under the provisions of this article receives the majority or majorities required for adoption, it shall become operative as prescribed therein, subject to any conditions prescribed therein.

Subd. 1 amended by L.1962, c. 403, eff. April 9, 1962. L.1962 substituted "any county * * * enacted by the legislature" for "a county".

§ 324. Limitations and restrictions

1. In accordance with the constitution, article nine, section two, paragraph (b), the legislature hereby imposes the following limitations on the powers of counties to prepare, adopt and amend county charters and charter laws.

2. Except in accordance with or consistent with laws enacted by the legislature, a county charter or charter law shall not contain provisions relating to:

a. Taxation of the property of the state or of any of its agencies;

b. Exemptions from taxation;

[fol. 34]

c. Assistance by the state to any unit of local government;

d. The division of the county into two or more counties or the creation, enlargement, diminution or abolition of any city, town, village or school district;

e. The compensation of members of the judiciary fixed by the legislature;

f. The composition, functions, powers, duties or jurisdiction of a court or of the officers thereof, except that functions, powers or duties assigned to units of local government or agencies or officers thereof outside the judicial system may be transferred to other units of local government, agencies or officers as authorized by this article.

3. Except in accordance with laws enacted by the legislature, a county charter or charter law shall not supersede any general or special provision of law enacted by the legislature:

a. Which relates to the imposition, judicial review or distribution of the proceeds of taxes or benefit assessments;

b. Insofar as it relates to the educational system in the county or to school districts therein, except that functions, powers or duties assigned to units of local government or to agencies or officers thereof outside the educational system may be transferred to other units of local government, agencies or officers as authorized by this article;

c. Which requires that specified functions of government be performed by or financed by units of local government, except that any of such functions may be transferred to other units of local government, agencies or officers as authorized by this article;

d. Insofar as it relates to a function, power or duty of the state or of any officer or agency thereof which is financed directly by the state;

e. Insofar as it relates to the commencement or prosecution of actions or proceedings against the county;

f. Insofar as it relates to a public benefit corporation;

g. In the city home rule law, civil service law, condemnation law, conservation law, articles six or six-a of the county law, election law, executive law, judiciary law, labor law, local finance law, multiple dwelling law, multiple residence law, public authorities law, public housing law, public service law, railroad law, retirement and social security law, state finance law, village home rule law, volunteer firemen's benefit law, or workmen's compensation law..

4. After the adoption of a county charter by a county pursuant to this article, no law enacted by the legislature pursuant to subdivision (b) of section one of article nine of the constitution which does not apply alike to all counties outside the city of New York, charter law or local law, which in its application to such county abolishes or creates an elective office, changes the voting or veto power of or the method of removing an elective officer, changes the term of office or reduces the salary of an elective officer during his term of office, abolishes, transfers or curtails any power

of an elective officer, or changes the form of composition of the board of supervisors of such county, shall become effective in such county until at least sixty days after its final enactment. If within sixty days electors of the county, duly registered to vote therein either for the last preceding or the next following general election, in number equal to at least five per centum of the total number of votes cast in the county for governor at the last gubernatorial election, shall file a petition with the county clerk or corresponding officer of the county protesting against such law, chapter law or local law, it shall become effective in such county only if approved by the electors thereof at the next ensuing general election held at least sixty days thereafter, subject to the conditions provided in subdivision seven of section three hundred twenty-three of this article for the adoption of a county charter when voted on by the electors of a county.

[fol. 35]

Subd. 4 amended by L.1962, c. 367, eff. May 1, 1962. L.1962 inserted references to charter law or local law in two instances.

Charter laws or local laws adopted on or after May 1, 1962. Section 2 of L.1962, c. 367, provided: "This act [amending subd. 4 of this section] shall take effect May first, nineteen hundred sixty-two, and shall be applicable to charter laws or local laws adopted by counties on or after such date."

§ 325. Legislative intent; construction

1. It is the intention of the legislature by this article to provide for carrying into effect the provisions of the constitution, article nine, section two, paragraph (b) and, pursuant to the direction contained therein, to empower counties to prepare, adopt and amend county charters by local legislative action, subject to limitations imposed herein.

2. It is not the intention of the legislature hereby to (a) abolish or curtail any powers or rights heretofore conferred upon or delegated to a county or counties or to any of the units of government therein or to any board, commission, body or officer thereof, or (b) adversely to affect the power of a county to adopt, amend or repeal county charters, county laws or local laws pursuant to any other authorization of the legislature, unless a contrary intention is clearly manifested from the express provisions of this article or by necessary intendment therefrom.

3. This article shall be construed liberally. The powers herein granted shall be in addition to any other powers granted to counties by any other provisions of general or special laws, including but not limited to charters, administrative codes, special acts or local laws. A permissive procedure authorized by this article shall not be deemed to be exclusive or to prohibit the use of any other procedure authorized by any general or special act of the legislature, charter, administrative code or local law lawfully adopted and still in effect.

4. All existing state, county, local and other laws or enactments, including charters, administrative codes and special acts having the force of law shall continue in force until lawfully amended, modified, superseded or repealed.

5. If any provision of this article is not clear or requires elaboration in its application to the county, the board of supervisors may interpret such provision in a local law not inconsistent with the provisions of this article. Where any question arises concerning the transition to a charter law which is not provided for herein, the board of supervisors may provide for such transition by a local law not inconsistent with the provisions of this article.

6. If any provision of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the par-

ticular provision directly involved in the controversy in which such judgment is rendered.

[fol. 36] Prior to the 1958 amendments (effective January 1, 1959) to Article IX of the State Constitution, provision had been made in the general revision of 1938 for alternative forms of county government. The pertinent provisions as they existed in 1958 are set forth as Exhibit I attached hereto and made a part hereof.

The legislature had adopted laws of general application providing for alternative and optional forms of government, but Albany was way ahead of the counties and for the most part none of them took advantage of these statutes.

The New York State Legislature passed Chapter 278 of the Laws of 1958 (New York), which became a law March 21, 1958, with the approval of the Governor.

A copy of that law follows.

[fol. 37]

LAWS OF NEW YORK.—By Authority

CHAPTER 278

AN ACT to provide an alternative form of government for Suffolk county to be known as "The Suffolk county charter"

Became a law March 21, 1958, with the approval of the Governor. Passed, on county message, pursuant to article IX. section 1 (b) of the Constitution, by a majority vote, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SUFFOLK COUNTY CHARTER

Article I. The county and its powers (§§ 101-105).

II. The board of supervisors (§§ 201-208).

III. The county executive (§§ 301-306).

IV. Fiscal year; budget; and tax levy (§§ 401-404).

V. Department of audit and control (§§ 501-504).

VI. Civil service commission (§§ 601-603).

VII. Department of purchase (§§ 701-704).

VIII. Department of public works (§§ 801-807).

IX. Department of health (§§ 901-905).

X. Department of public welfare (§§ 1001-1003).

XI. Department of civil defense (§§ 1101-1103).

XII. Department of police (§§ 1201-1215).

XIII. Department of planning (§§ 1301-1304).

XIV. County treasurer (§§ 1401-1402).

XV. County attorney (§§ 1501-1502).

XVI. Sheriff (§§ 1601-1602).

XVII. County clerk (§§ 1701-1702).

XVIII. District attorney (§§ 1801-1802).

XIX. Medical examiner (§§ 1901-1903).

XX. Elections (§§ 2001-2003).

XXI. Miscellaneous offices and functions (§§ 2101-2102).

XXII. General provisions (§§ 2201-2210).

XXIII. Application of act; when and how operative and effective (§§ 2301-2310).

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* Explanation—Matter in italics is new; matters in brackets ( ) is old law to be omitted.

ARTICLE I

THE COUNTY AND ITS POWERS

Section 101. County a municipal corporation; powers.

102. County charter provided by this act.

103. Special and general laws.

104. Local laws and laws relating to towns; villages and districts.

105. Construction.

§ 101. County a municipal corporation; powers. Suffolk county, upon adoption of this act, as hereinafter provided, shall be and remain a municipal corporation under its then name. It shall have and exercise all the rights, privileges, functions and powers conferred upon it and shall be subject to all the duties and obligations imposed upon it by existing or subsequent laws not inconsistent with the provisions of this act, including all that may be necessarily incident to, or may be fairly implied from, the powers specifically conferred upon such corporation.

§ 102. County charter provided by this act. This act provides a county charter for the government of Suffolk county, in accordance with the provisions of article nine of the constitution of the state and shall be known and may be cited as "The Suffolk County Charter". This act shall relate solely and specifically to Suffolk county.

§ 103. Special and general laws. All special laws relating to Suffolk County and all general laws of the state shall continue in full force and effect except to the extent that such laws have been amended, modified or superseded in their application to Suffolk county by enactment and adoption of this charter.

§ 104. Local laws and laws relating to towns, villages and districts. All local laws heretofore adopted by Suffolk county and all laws of the state relating to the towns, villages or districts therein shall continue in full force and effect except to the extent that such laws have been repealed, amended, modified or superseded in their application in Suffolk county by enactment and adoption of this charter.

§ 105. Construction. No provision of this charter shall be construed to curtail, limit or diminish in any respect the powers and duties of the governor or comptroller of the state relating to the affairs and government of Suffolk county or any officer or employee thereof.

ARTICLE II

THE BOARD OF SUPERVISORS

Section 201. The board of supervisors; general powers.

202. Specific powers.

203. Voting; quorum.

204. Procedure.

205. Presiding officer.

206. Approval of local laws and resolutions by county executive.

207. Compensation.

208. Employees.

[fol. 38] § 201. The board of supervisors; general powers. The supervisors of the several towns of the county, when lawfully convened, shall constitute the board of supervisors of the county. It shall be the legislative and policy determining body of the county and shall, except as otherwise

expressly provided in this charter, have and exercise all the powers and duties of the county together with all the powers and duties which now are, or may hereafter be, conferred or imposed on boards of supervisors by all laws applicable to the county not inconsistent with this charter. The board of supervisors shall also have such other powers and duties as are provided by this charter.

§ 202. Specific powers. In addition to all powers conferred by section two hundred one or by other provisions of this charter, the board of supervisors shall have the power to:

(1) Exercise all powers of legislation as provided in article nine of the constitution of the state and this charter;

(2) Adopt, amend and repeal local laws as provided by law and for the purpose of making effective any of the provisions of this charter and to carry out all powers conferred upon the county or the board of supervisors by any other law;

(3) Except as otherwise provided in this charter, create, organize, alter and abolish departments, commissions, bureaus, offices and employments and/or transfer their functions and duties not inconsistent with this charter;

(4) Except as otherwise provided in this charter and subject to the constitution and general laws of the state, fix the compensation of all officers and employees of the county paid from county funds, except members of the judiciary;

(5) Provide for the enforcement of local laws by legal or equitable proceedings or actions in a court of competent jurisdiction and prescribe that violations thereof shall constitute offenses or misdemeanors and provide for the punishment of violations thereof by civil penalty, forfeiture, fine not exceeding five hundred dollars, or imprisonment for not more than six months, or by any two or more such penalties;

(6) Fix the amount of the bond to be given by any official or employee of the county, conditioned on the faithful performance of his duty, and make the premium on such bonds a county charge;

(7) Make appropriations, levy taxes and incur indebtedness for the purpose of carrying out any of the powers and duties conferred or imposed on the county or any officer, board, commission or other authority thereof, by this charter or otherwise by law;

(8) Make rules and regulations, by resolution, covering the use of, parking on, and traffic in and through, any county-owned property, except as to any roads or other property under the jurisdiction and control of the state or any of its agencies and to provide that upon conviction for violation of any one or more of such rules or regulations a person so offending may be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days or by both such fine and imprisonment, and to provide further that a violation of any speed limitation shall constitute an offense;

(9) Investigate the performance of any of the functions, offices or departments of the government of the county;

(10) Employ such legal, financial or other technical advisors as it may from time to time deem necessary for the performance of any of its functions.

§ 203. Voting; quorum. Each supervisor shall have one vote. A majority of the whole number of the members of the board shall constitute a quorum. Except as otherwise provided by law, local laws and resolutions shall be adopted by a vote of not less than a majority of the total membership of the board. In case of a tie vote on any matter at any meeting of the board of supervisors the county executive shall have a casting vote, provided, however, that he shall not have a vote as to any local law or resolution which

provides a new form of government, for the county or changes the voting strength of the supervisors, or which changes the location of the county seat.

§ 204. Procedure. 1. The board of supervisors shall hold regular meeting* at stated intervals.

2. Special meetings of the board shall be held at the call of the clerk of the board upon the direction of the presiding officer, county executive or upon written request signed by a majority of the members of the board. Notice in writing of the time, place and purpose of the meeting shall be served personally or by mail upon each member at least forty-eight hours before the date fixed for holding the meeting, or a member may waive the service of the notice for such meetings by a writing signed by him. Only business specified in the notice thereof may be transacted at a special meeting.

3. All meetings of the board of supervisors shall be public. Any meeting of the board may be adjourned from time to time.

4. The board of supervisors, by resolution, may establish rules for its own proceedings, including rules for the preparation, posting and distribution of a calendar of matters to be considered at all meetings and notices of all special meetings of, and public hearings before, the board.

[fol. 39] 5. The records of the board of supervisors on matters placed upon the calendar and any and all actions taken and proceedings had by such board shall be available for inspection during office hours of the clerk of the board.

§ 205. Presiding officer. The board of supervisors shall annually at an organization meeting held as provided by the county law select from its own members a presiding officer who shall preside and act as chairman of all meet-

* So in original. [Evidently should read "meetings".]

ings of the board except as herein provided. The county executive shall preside at the organization meeting until the presiding officer has been selected whereupon such newly selected presiding officer shall preside. In the event of a tie vote for the selection of such presiding officer of the board of supervisors the county executive shall cast the deciding vote.

§ 206. Approval of local laws and resolutions by county executive. No local law or resolution, other than a resolution relating to procedure, shall take effect until it has been submitted to the county executive for his approval. If so approved, it shall be effective immediately upon his approval. If such local law or resolution is not returned by the county executive to the board within ten days of its submission to him with a statement of his reasons for not approving the same, such local law or resolution shall be deemed to be approved as of said tenth day. Any local law or resolution returned to the board with the disapproval of the county executive shall nevertheless become effective forthwith if upon further consideration it is passed by the board of supervisors by affirmative vote of two-thirds of the total membership. After a lapse of ten days from the date a local law or resolution has been returned to the board of supervisors with the disapproval of the county executive it shall become effective forthwith if upon further consideration it is passed by the board of supervisors by affirmative vote of a majority of the total membership.

§ 207. Compensation. The members of the board of supervisors shall receive such compensation as may be fixed by resolution of the board of supervisors.

§ 208. Employees. The board of supervisors shall appoint to serve at their pleasure a clerk of the board of supervisors and such other employees as may be provided by resolution.

ARTICLE III
THE COUNTY EXECUTIVE

Section 301. Election; qualifications.

302. Powers and duties.

303. Assignment of supervisors' powers and duties to county executive.

304. Acting county executive.

305. Removal of county executive.

306. Department of county affairs and office of county coordinator abolished.

§ 301. Election; qualifications. There shall be a county executive who shall be elected from the county at large. His term of office shall be four years from and including the first day of January next following his election. He shall be at all times a qualified elector of the county. He shall give his whole time to the duties of the office.

§ 302. Powers and duties. In addition to all powers conferred by other provisions of this charter, the county executive shall

(1) Be the administrative head of the county government; and have general supervision over all administrative units of the county except the elective officers thereof;

(2) Advise, consult with and assist all officers, boards, commissions and other units of the county government;

(3) Except as otherwise provided by law or by this charter, appoint, with the approval of the board of supervisors, the heads of every county department and office and the members of county boards and commissions and appoint, without the approval of the board of supervisors, but within the appropriations therefor, such officers and employees in

his own office as may be necessary for the performance of his duties;

(4) Prepare and present to the board of supervisors the annual budget in the manner and form provided in article four of this charter;

(5) Do and perform such additional acts, duties and governmental functions as may be delegated to him by local law or resolution of the board of supervisors;

(6) Report to the board of supervisors annually at the close of the fiscal year, or as soon thereafter as practicable, the financial and other transactions of the county together with the reports of the departments of the county government;

(7) See that all laws pertaining to the administration of the government of the county are enforced;

(8) Investigate and report to the board of supervisors the failure of any county officer or other official paid from county funds, or the head of any administrative agency or institution to enforce any law or to perform any duty which such official, agency or institution is required to enforce or perform;

(9) Report to the board of supervisors the removal of any appointive officer or employee of the county pursuant to section two thousand two hundred nine of this charter or otherwise;

(10) Present to the board of supervisors, from time to time such information concerning the affairs of the county [fol. 40] as he may deem necessary or as the board of supervisors may by resolution request.

§ 303. Assignment of supervisors' powers and duties to county executive. The board of supervisors may, by local law or resolution, delegate to the county executive the exercise or performance of any of its powers and duties,

except those which it must exercise or perform by local law or resolution as provided in this charter or the laws of the state applicable to the county, and except its powers and duties of a distinctly legislative character. The action of the county executive in any matter so devolved shall have the same effect in law as if performed by the board of supervisors.

§ 304. Acting county executive. The county executive shall, subject to the approval of the board of supervisors, designate a deputy to perform the administrative duties of the county executive during his absence or disability and file such designation with the county clerk. During the absence or disability of both the county executive and the deputy county executive so designated, the presiding officer of the board of supervisors may perform such administrative duties. The acts so performed by such deputy or presiding officer shall have the same effect in law as if performed by the county executive.

§ 305. Removal of county executive. The county executive may be removed by the governor in the manner provided in section thirty-three of the public officers law for the removal of other county officers.

§ 306. Department of county affairs and office of county coordinator abolished. The department of county affairs and the office of county coordinator, both established by local law number two of the year nineteen hundred fifty-seven, are abolished effective on the first day of January of the year following the election of the county executive.

ARTICLE IV
FISCAL YEAR; BUDGET; AND TAX LEVY

Section 401. Fiscal year.
402. County budget.
403. Budget officer.
404. Tax levies.

§ 401. Fiscal year. The fiscal year of the county shall begin on the first day of January and end with the thirty-first day of December in each year.

§ 402. County budget. Except as otherwise expressly provided in this charter or by law, all provisions of article seven of the county law, as now in force or hereafter amended, shall apply to the county.

§ 403. Budget officer. The budget officer shall be the county executive or the deputy county executive if so designated by the county executive, with the approval of the board of supervisors.

§ 404. Tax levies. When the county budget shall have been finally adopted, the board of supervisors shall levy all taxes and assessments in the manner and within the time prescribed by law.

ARTICLE V
DEPARTMENT OF AUDIT AND CONTROL

Section 501. Department established; county comptroller.
502. Powers and duties of the comptroller.
503. Audit and payment of claims.
504. Accounts.

§ 501. Department established; county comptroller. There shall be a department of audit and control, the head of which shall be the comptroller. The comptroller shall be elected from the county at large. His term of office shall be four years from and including the first day of January next following his election. He shall be the chief fiscal officer of the county.

§ 502. Powers and duties of the comptroller. The county comptroller shall:

(1) Except as otherwise expressly provided in this charter, have all the powers and perform all the duties conferred or imposed upon a county comptroller or the chief fiscal officer of a county under the county law;

(2) Examine, audit and verify all books, records and accounts kept by the various administrative units, departments, offices or officials paid from county funds, institutions and other agencies of the county, including bond and note registers and trust accounts, and the accrual and collection of all county revenues and receipts, and for this purpose have access to all such books, records and accounts at any time;

(3) Prescribe the form of receipts, vouchers, bills or claims to be filed by all departments, institutions, offices and agencies of the county;

(4) Examine and approve for payment all contracts, purchase orders, and other documents by which the county incurs financial obligations, having ascertained before approval that moneys have been duly appropriated or provided for and allotted to meet such obligations and will be available when such obligations shall have become due and payable, and record such obligations and encumbrances of the respective appropriations from which such obligations are to be paid;

(5) Audit and approve all bills, invoices, payrolls and other evidences of claims, demands, or charges against the county or any county district, and determine the regularity, legality and correctness of the same;

(6) Submit monthly reports to the board of supervisors in such form and detail and at such other times as may be prescribed by the board of supervisors;

[fol. 41] (7) Be the auditing authority of the county;

(8) Prescribe such methods of accounting for the county and other units of the local government of the county as he may deem necessary, provided the same shall have been approved by the county executive and the state comptroller;

(9) Perform such other duties pertaining to the financial affairs of the county as may be directed by the board of supervisors, the county executive or by any law or by any fiscal officers of the state authorized so to do by law.

§ 503. Audit and payment of claims. No claims against the county except for debt service, payrolls and judgments or other amounts required to be paid by the county pursuant to court orders, shall be paid except upon a voucher verified by the oath of the claimant or accompanied by a certificate made by the claimant to the same effect and certified by the head of the appropriate department, institution, office or agency of the county government, and in the case of purchases for a store account by the director of purchasing, and by means of a warrant on the county treasurer signed by the comptroller. No warrant shall be issued for the purpose of meeting any payroll or item service commission.

§ 504. Accounts. Accounts shall be kept for each specific item of appropriation made by the board of supervisors, and every warrant on the treasury shall state specifically against which of said appropriations the warrant is drawn. Each such account shall show in detail the

appropriation made by the board of supervisors, any transfer to or from such appropriation, the amount drawn thereon, unpaid obligations charged against it, and the unencumbered balance to the credit thereof.

ARTICLE VI

CIVIL SERVICE COMMISSION

Section 601. Commission established.

602. Organization of commission.

603. Powers and duties.

§ 601. Commission established. There shall be a county civil service commission consisting of three members. The members of the civil service commission shall be appointed by the county executive with the approval of the board of supervisors for terms of six years except that the first appointments shall be for terms of two, four and six years, respectively. Not more than two members of the civil service commission shall at any one time be members of the same political party. The members of the civil service commission shall hold no other office under the United States, the state of New York, or any county, town, city, village, school district or special district; nor shall they serve on any political committee or take an active part in the management of any political campaign. They may be removed only in the manner provided in the civil service law for the removal of members of municipal civil service commissions.

§ 602. Organization of commission. The civil service commission shall annually elect one of its members chairman. Within the appropriation therefor, it shall appoint a secretary and chief examiner, and such other officers and employees, as may be necessary for the performance of its duties. The secretary and chief examiner shall be a person skilled in the principles and methods of personnel

administration and shall perform such duties as may be required by the commission.

§ 603. Powers and duties. Except as otherwise provided in this charter, the county civil service commission shall have, with reference to the civil service of the county, the powers and duties of a municipal civil service commission as provided in the civil service law of this state, and shall be subject to supervision and control by the state civil service commission as are municipal civil service commissions. The county executive shall have the powers and duties, with reference to the county civil service commission, of the mayor of a city, under the said civil service law, except as otherwise provided in this charter.

ARTICLE VII

DEPARTMENT OF PURCHASE

Section 701. Department established; director of purchasing; employees.

702. Powers and duties.

703. Competitive bids.

704. Sale of surplus property.

§ 701. Department established; director of purchasing; employees. There shall be a department of purchase, the head of which shall be the director of purchasing. The director of purchasing shall be appointed by the county executive with the approval of the board of supervisors for the term for which the members of the board of supervisors were elected. There shall be such other officers and employees in said department as may be established by action of the board of supervisors from time to time.

§ 702. Powers and duties. Except as otherwise provided in this charter or by law, the director of purchasing shall make all purchases and all contracts for supplies, materials and equipment of every nature for the county or for any county department, institution, office or agency, for which the county may in any event be liable.

[fol. 42] § 703. Competitive bids. All purchases and contracts for supplies, materials or equipment shall be made in compliance with the provisions of the county law and the general municipal law relating to advertising and competitive bidding.

§ 704. Sale of surplus property. Pursuant to such rules and regulations as may be established by local law or resolution of the board of supervisors, the director of purchasing may sell or lease any surplus, obsolete or unused supplies, materials or equipment or apply the same against the purchase price of supplies, materials and equipment as a trade in.

ARTICLE VIII

DEPARTMENT OF PUBLIC WORKS

Section 801. Department established; commissioner of public works.

802. Powers and duties.

803. Deputy commissioner; chief engineer; employees.

804. Divisions of the department.

805. Entry for survey purposes.

806. Snow removal.

807. Contracts with towns, villages and districts.

§ 801. Department established; commissioner of public works. There shall be a department of public works, the head of which shall be the commissioner of public works. He shall be appointed by the county executive with the approval of the board of supervisors for a term of four years. He shall have, in addition to the powers and duties set forth in this chapter, all the powers and duties of a county engineer and a county superintendent of highways pursuant to the highway law or any general or special law applicable in the county. He shall be a professional engineer licensed by the state of New York.

Upon the effective date of this charter the office of county superintendent of highways and of county engineer, if any, is abolished and the powers and duties of the office shall devolve upon the department of public works, provided that the county superintendent of highways in office at the date this charter takes effect shall be and become a commissioner of public works until the expiration of the term for which he was appointed.

§ 802. Powers and duties. Except as otherwise provided in this charter, the department of public works shall:

(1) Have charge and supervision of the design (including the preparation of the plans and specifications), construction, reconstruction, improvement, maintenance, repair, cleaning and lighting of all highways, roads, streets, bridges and grade separation structures and drains and drainage structures under the jurisdiction of the county and establish the grades and alignment for all of the said highways, roads, streets, bridges and grade separation structures;

(2) Have charge and supervision of the design, construction and alterations of the county buildings, parking fields, drives, walks, docks, marinas, parks, preserves, beach erosion projects and structures, and such other structures and facilities in the nature of public works under the jurisdiction of the county;

(3) Have charge and supervision of maintenance, repair and alterations of buildings owned or leased by the county, parking fields, drives, walks, docks, marinas, parks, preserves, beach erosion projects and structures and other structures and facilities in the nature of public works under the jurisdiction of the county;

(4) Have charge of the operation of all county movable bridges, toll bridges, canals, canal locks, and of all other county owned or leased facilities placed under the jurisdiction of the department by the board of supervisors, the said operation to include the collection and depositing of all tolls, fees and other charges for the use of the same as may be established by resolution of the board of supervisors;

(5) Furnish engineering and other services to the board of supervisors, the county planning commission and other county departments, except as otherwise provided in this charter;

(6) Make all surveys and studies for the elimination or protection of grade crossings involving county roads and the railroad and to represent the county before the public service commission in such cases; and, when authorized by the board of supervisors, perform similar services for the towns;

(7) Except as otherwise provided by law, have full care, custody and control of all waterways, and county owned or leased waterways equipment, boats, dredges and all materials and equipment appurtenant thereto;

(8) Maintain a testing laboratory for materials used by the department; have charge and supervision of studies for the conservation of water and general natural resources; have charge and supervision of all topographic, hydrographic and land surveys made for the county;

(9) Let all contracts for the construction, maintenance or repair of county roads and bridges pursuant to the high-

way law and of such other public works as the board of supervisors may direct; make all purchases of supplies, materials and equipment for use by the department in public works projects pursuant to the highway law and other pertinent laws; rent or hire all equipment necessary to supplement that owned by the department; and

[fol. 43] (10) Have charge of any county owned airport and to be in charge and have the duty of performing such other functions concerning county property, public works and other matters as the board of supervisors or the county executive may, from time to time, direct;

(11) The provisions of this article shall not be deemed to curtail any of the powers and duties of the Suffolk county water authority, the Suffolk county mosquito commission, or the trustees of the Vanderbilt Museum.

§ 803. Deputy commissioner; chief engineer; employees. The commissioner of public works shall appoint a deputy commissioner of public works and a chief engineer, both of whom shall be professional engineers licensed by the state of New York, and within the appropriation therefor, all other officers and employees of the department as may be necessary. It shall be the duty of the deputy commissioner to assist the commissioner in the administration of his office and, in the absence of the commissioner, to perform the duties and possess the powers of the commissioner of public works.

It shall be the duty of the chief engineer to provide general engineering supervision over the various divisions of the department and to coordinate the various engineering functions performed by the departmental divisions; to have charge of departmental planning; to act as engineering liaison between the commissioner, the board of supervisors and special engineering or architectural consultants, all as directed by the commissioner.

Notwithstanding any other provision of this section or act to the contrary, the commissioner, if he so elects, may

assign the chief engineer to fill, in addition to his position as chief engineer, the position of deputy commissioner, and the person so appointed shall have, thereafter, the duties and titles of both positions; or the commissioner may fill the position of deputy commissioner by a separate appointment.

Within the appropriation therefor, and when authorized by the county executive, the commissioner of public works may employ such special engineering, architectural or other technical counsel as may be necessary.

§ 804. Divisions of the department. There shall be the following divisions within the department of public works: a division of highways, a division of bridges and structures, a division of waterways, a division of buildings and grounds, and such other divisions as may be created within the department by local law or by resolution of the board of supervisors. The commissioner shall assign a division head to each division who shall have direct charge of the work to be performed by the division. It shall be the duty of each division head while holding such position to carry out the function of such division as provided by local law or by directives of the commissioner. Such division head shall be subject to reassignment or transfer by the commissioner to other duties within the department. The commissioner may assign the deputy commissioner or chief engineer as head of a division or he may assume such duties himself.

§ 805. Entry for survey purposes. The commissioner of public works and any consulting engineer, deputy, assistant or employee of the department of public works designated by him may enter upon any lands, water or waterways, public or private, within the county, without hindrance, for the purpose of making any surveys, examinations or investigations necessary or convenient in the exercise or performance of any of the other powers or duties conferred

or imposed on the department of public works or any officer thereof by this charter or otherwise by law.

§ 806. Snow removal. It shall be the duty of the county department of public works as a county charge to remove snow as rapidly as may be from all highways, roads, streets, bridges and parking fields under the jurisdiction of the county.

§ 807. Contracts with towns, villages and districts. The department of public works may perform engineering and other services for any town, village or district within the county in relation to the public works of such town, village or district, and towns, villages, and districts are hereby expressly authorized to enter into contracts with the county for such services; provided that the charge for such services shall be in each case the actual cost, including pro-rated overhead, of rendering the service as certified by the commissioner of public works.

ARTICLE IX

DEPARTMENT OF HEALTH

Section 901. County a health district; department established; commissioner of health.

902. Powers and duties of the commissioner.

903. Board of health.

904. Local boards of health abolished.

905. Sanitary code.

§ 901. County a health district; department established; commissioner of health. The county, including the towns and villages situated therein, shall continue to be a county health district. There shall be a department of health, the head of which shall be the commissioner of health. He

shall be appointed by the county executive with the ap-
[fol. 44] proval of the board of supervisors, upon the recommendation of the board of health, for a term of six years. He shall be a physician duly licensed to practice medicine in the state of New York, shall be experienced in public health administration and shall meet such minimum qualifications of professional and administrative education and experience as may be defined by the public health council of the state. He shall give his whole time to the duties of his office.

§ 902. Powers and duties of the commissioner. The commissioner of health shall be the chief administrative officer of the department and except as otherwise provided in this article shall have all the powers and perform all the duties conferred or imposed upon county health officers and county boards of health.

§ 903. Board of health. There shall be in the department a board of health constituted and appointed as provided by the public health law. The board of health, subject to the provisions of the public health law and state sanitary code shall have the power to adopt, promulgate, amend or repeal such rules and regulations affecting public health in the county. The board of health shall at the request of the commissioner, consider any matter relating to the preservation and improvement of the public health and may advise the commissioner thereon; and it may, from time to time, submit to the commissioner any recommendations relating to the preservation and improvement of the public health. The board of health shall have no executive, administrative or appointive duties except as otherwise provided in this article.

§ 904. Local boards of health abolished. When the county board of health shall have been appointed and organized, and the county health commissioner shall have been appointed and qualified, the local boards of health

and local health offices of all towns and incorporated villages shall thereupon cease to exist as such, except that the health officer of each local board of health shall be permitted to complete the term for which he was appointed, serving as a deputy of the county health commissioner; provided, that local health ordinances, rules and regulations not in conflict with the county health ordinances, the public health law, or regulations made in accordance therewith may be adopted and enforced by appropriate penalties by any town or village within the county.

§ 905. Sanitary code. 1. The sanitary code of the county health district which is in force on the date this charter takes effect and all existing provisions of law fixing penalties for violation of the code when this charter takes effect shall continue to be binding and in force, except as amended or repealed from time to time. Such code shall have the force and effect of law.

2. The board of health is hereby authorized and empowered from time to time to add to and to alter, amend or repeal any part of the sanitary code. No provision of such code shall be inconsistent with the constitution or laws of the state, or the state sanitary code, or with any orders made by the state commissioner of health. Any violation of such sanitary code shall be enforced in the manner prescribed by the public health law or as may be provided under such sanitary code.

ARTICLE X

DEPARTMENT OF PUBLIC WELFARE

Section 1001. Department established; commissioner of public welfare.

1002. Powers and duties of the commissioner.

1003. Board of public welfare.

§ 1001. Department established; commissioner of public welfare. There shall be a department of public welfare, the head of which shall be the commissioner of public welfare. He shall be elected from the county at large. His term of office shall be three years from and including the first day of January next following his election. He shall be a member ex officio of the board of public welfare.

§ 1002. Powers and duties of the commissioner. The commissioner of public welfare shall be the chief administrative officer of the department and shall have all the powers and perform all the duties conferred or imposed upon commissioners of public welfare.

§ 1003. Board of public welfare. There shall be a board of public welfare consisting of the commissioner of public welfare and four other members appointed by the county executive. The four other members shall be appointed for terms of four years. The first appointments shall be for terms of one, two, three and four years, respectively. The board of public welfare shall, at the request of the commissioner, consider any matter relating to the preservation and improvement of the department of public welfare and may advise the commissioner thereon; and it may, from time to time, submit to the commissioner any recommendations relating to the preservation and improvement of the department of public welfare. The board of public welfare shall have no executive, administrative or appointive duties.

ARTICLE XI

DEPARTMENT OF CIVIL DEFENSE

Section 1101. Department established.

1102. Powers and duties.

1103. Other laws.

§ 1101. Department established. There shall be a department of civil defense, the head of which shall be the director of civil defense. He shall be appointed by the [fol. 45] county executive with the approval of the board of supervisors.

§ 1102. Powers and duties. The department of civil defense shall provide and maintain a plan of civil defense for the protection of life and property in Suffolk county from enemy attack and assist in the protection of life and property threatened by natural disaster, conforming to the plans, regulations and orders of the New York state civil defense commission.

§ 1103. Other laws. The department of civil defense shall be maintained and operated in accordance with the emergency defense law and other laws of the state as the same shall be from time to time amended.

ARTICLE XII

DEPARTMENT OF POLICE

Section 1201. County police department.

1202. Commissioner of police; officers.

1203. Appointment of members of police department.

1204. Tenure of office; promotions.

1205. Headquarters division.

1206. Vote on creation of county police district.

1207. County police district; how established.

1208. Powers of police department.

1209. Contracts with the county police department.

12.10. Expenses of the police department; how raised.

1211. Precincts.

1212. Transfer of personnel; civil service status.

1213. Discipline and punishment.

1214. Acquisition of town or village police property.

1215. Special patrolmen.

§ 1201. County police department. There shall be a Suffolk county police department, the head of which shall be the commissioner of police. The county police department shall consist of a headquarters division and, upon the establishment of a county police district pursuant to section twelve hundred seven of this article, of a county police district as herein provided. Within the county the county police department and members thereof shall exercise all rights, privileges, duties and responsibilities of peace officers and law enforcement officers, as provided in the penal law, code of criminal procedure and other laws of the state and county.

§ 1202. Commissioner of police, officers. a. The commissioner of police shall be appointed by the board of supervisors for a term of six years. The commissioner of police, at the time of his appointment, must be a citizen and a resident of the state of New York for at least one year. Before entering upon the duties of his office, the commissioner of police shall take and subscribe the constitutional oath of office and file the same in the office of the county clerk. There shall be a chief inspector of county police and such numbers of inspectors, captains, lieutenants, sergeants and patrolmen as shall be determined by the board of supervisors upon the recommendation of the commissioner of police.

b. The commissioner of police shall be appointed on or after the first day of February, of the year preceding the year in which the county police department provided for by this article shall become active pursuant to subdivision three of section twenty-three hundred nine of this act. Between the said date of his appointment and January first of the succeeding year, the commissioner of police shall make such surveys, studies, and preparations regarding the needs of the county police department as he shall deem necessary and proper for the proper functioning of the Suffolk county police department in accordance with the provisions of this article commencing on the first day of the activation thereof, as aforesaid. Such surveys, studies and preparations shall include but shall not be limited to:

1. The preparation of a budget or budgets for such succeeding year.

2. The obtainment of all necessary and proper facilities for the functioning of the county police department or after the activation thereof.

3. The arrangement for the orderly transfer of the criminal investigators in the office of the district attorney to the headquarters division of the county police department.

4. The formulation with approval of the board of supervisors of all necessary departmental rules and regulations governing the county police department on and after the date of its activation.

5. The formation of and recommendation to the board of supervisors of a table of organization of the bureaus and other divisions of the headquarters division of the county police department and of the county police district, and of the number of inspectors, captains, lieutenants, sergeants and patrolmen which he shall deem necessary to adequately staff each of such bureaus and divisions, com-

mencing on the date of the activation of the county police department as provided by this act.

The commissioner of police shall appoint such number of police officers and employees to assist him in the conduct of such studies, surveys and preparations as shall be de- [fol. 46] termined, upon his recommendation, by the board of supervisors.

§ 1203. Appointment of members of police department. Except as otherwise provided by this article, the members of the police department shall be appointed from an eligible civil service list by the commissioner of police. No person shall be appointed a member of the police department who has ever been convicted of a felony, who is not a citizen of the United States, cannot understandingly read and write the English language, or who shall not have resided within the county for one year next preceding his appointment. The board of supervisors may waive by local law, in appropriate specific individual cases, the requirement of residence within the county for one year next preceding the appointment of specific appointees as members of the county police department.

§ 1204. Tenure of office; promotions. Each member of the police department, except the commissioner of police, shall hold office during good behavior.

§ 1205. Headquarters division. There shall be, as part of the headquarters division of the county police department, a bureau for detective purposes to be known as the detective bureau, a bureau of communications and information, a bureau of identification, a police laboratory, and a bureau of police training, and such other bureaus or officers as the board of supervisors, upon the recommendation of the commissioner of police, shall deem proper for the police and law enforcement work in the county. The commissioner shall assign such members of the headquarters division to the office of the district attorney on a temporary or per-

manent basis as the district attorney shall from time to time require, and shall likewise assign such members to any other officer or county department to render such service to such officer or county department as the commissioner may determine. The criminal investigators in the office of the district attorney shall be transferred to the headquarters division immediately upon the organization of the county police department.

§ 1206. Vote on creation of county police district.

1. At the general election at which a vote is taken on the adoption of this charter there shall also be submitted to all the electors of all of the towns of Suffolk county, including the electors within incorporated villages, the following question, "Shall the town of authorize the transfer of its police functions to the county police department of Suffolk county and shall said town become a part of the Suffolk county police district?"

2. At said general election at which the vote is taken on the adoption of this charter there shall also be submitted to all the electors of each incorporated village in said county the following separate question, "Shall the village of authorize the transfer of its police functions to the county police department of Suffolk county and shall said village become part of the Suffolk county police district?"

§ 1207. County police district; how established.

1. If three or more contiguous towns, by a majority vote cast in each such town, elect to transfer their police functions to the county and to become part of the county police district, a county police district shall thereupon be created effective on the first day of January of the second year following such election and such district shall thereupon become part of and be under the jurisdiction of the county police department. The county police district so created

shall consist of the unincorporated territory of the three or more contiguous towns so electing to become part of the county police district and also the territory of any incorporated village situated within any of said contiguous towns which has by a majority vote cast in such village, elected to transfer its police functions to the county and to become part of the county police district. The election of any such town or village shall be irrevocable.

2. The town of Shelter Island shall be deemed to be contiguous to the towns of Southold, Southampton and East Hampton.

3. Once a county police district has been created, any town, village or special police district contiguous to such county police district may thereafter elect to become part of the county police district and upon making such election by the majority vote of the electors of such town, special police district or village, the area comprising such town, special police district or village shall become irrevocably a part of the county police district on the first day of January of the second year following such election.

§ 1208. Powers of police department. a. In addition to any and all others powers herein granted to the Suffolk county police department, the members of the police department shall possess all the powers of constables, except in the service of civil process, in every part of the state.

b. Any warrants of search or arrest issued by any magistrate of this state may be executed in any part thereof by any member of such department. The provisions of the code of criminal procedure relating to the giving and taking of bail shall apply to any arrest so made by a member of such department.

c. It shall be the duty of the police department to preserve the public peace, prevent crime, detect and arrest offenders, protect the rights of persons and property and enforce all laws and ordinances applicable to the county.

[fol. 47] § 1209. Contracts with the county police department. Any village, special district or town, not a party of the county police district, may by a resolution of the governing body, enter into a contract with the county police department for a term of not less than two years, by which the county police department will agree to provide a specified degree and type of police protection at a price to be set forth in such contract. Such contract may provide for the number of police to be assigned to duty in such village, district or town. Nothing herein contained shall be taken to limit the power of the commissioner of police in removing, administering or otherwise displacing or changing the rank or status of any member of the county police department subject to the provisions of the civil service law.

§ 1210. Expenses of the police department; how raised. a. The board of supervisors shall annually cause to be raised the amount of money required to pay the annual expenses of the police department by levying and collecting a uniform tax upon real estate subject to taxation located within the county police district, based upon the equalized assessed valuation of such real estate.

b. Notwithstanding the provisions of subdivision a of this section, the board of supervisors shall annually cause to be raised by levying and collecting a tax upon the real estate subject to taxation and located within the county, in the same manner as other county taxes, the amount of money required to pay the annual expenses of the maintenance, operation and personnel services of the bureaus, divisions or offices which are part of the headquarters division, including the communications bureau, the detective bureau, the information bureau, the police training bureau, the administrative division, the identification division, the office of the commissioner of police, the police laboratory, and such other bureaus, divisions, squads or offices which serve the county. Such expenses shall be a county charge

and shall be defrayed in the same manner as other county charges.

§ 1211. Precincts. The commissioner, with the approval of the board of supervisors, shall divide the district into as many precincts as he deems necessary.

§ 1212. Transfer of personnel; civil service status. When the police functions of any town, special police district or village are transferred to the county and such town, special police district or village becomes part of the county police district as in this article provided, the members of the police department of such town, special police district or village shall be transferred to and become members of the county police department in accordance with and to the extent provided in section sixteen, subparagraph nine-a of the civil service law.

§ 1213. Discipline and punishment. The commissioner shall have the power to discipline a member of the department by

1. Reprimand;

2. Fine;

3. Suspension, with or without pay in accordance with the provisions of the civil service or other applicable law;

4. Dismissal or removal from the force; or

5. Reducing into any grade below that in which he was serving, if he be above the grade of patrolman, after which his compensation shall be the same as that allowed to members of the grade to which he is reduced.

b. Such members shall be disciplined for the following reasons only:

1. Conviction for any criminal offense;

2. Neglect of duty;

3. Violation of rules;

4. Neglect or disobedience of orders;

5. Incapacity;

6. Absence without leave;

7. Conduct injurious to the public peace or welfare;

8. Immoral conduct;

9. Conduct unbecoming an officer; or

10. Any other breach of discipline.

The commissioner may designate a captain or an inspector to conduct hearings on charges against lieutenants, sergeants and patrolmen and to report his findings and recommendations to the commissioner for action thereon. In case of disciplinary action by fine, not more than thirty days pay shall be forfeited and withheld for any offense.

The commissioner shall remove or dismiss any members of the force only after;

1. Written charges are preferred against and served upon such member, and

2. Such members shall have had an opportunity to be publicly heard and examined before the commissioner.

A petition to review a determination by the commissioner to fine, suspend, dismiss, or otherwise discipline a member of the police department shall not be granted after the expiration of thirty days from the service of a notice of such determination upon the member of the department so fined, suspended, dismissed or otherwise disciplined.

§ 1214. Acquisition of town or village police property. In the event that any town or village elects to become a part of the county police district pursuant to this article, the town board of such town, or the board of trustees of

[fol. 48] such village, as the case may be, may convey to the county, and the board of supervisors may purchase on behalf of the county, any real or personal property owned and used by such town or village in connection with its police force or other police department, at such price and upon such terms as may be agreed upon between the board of trustees of such village. The cost to the county of any and all such property shall be charged to the police district except for so much of such cost which is allocable toward the purchase of so much of such property acquired with the approval of the board of supervisors for the headquarters division of the county police department.

§ 1215. Special patrolmen. a. The commissioner may appoint as many citizens as he deems advisable to serve as special patrolmen, without pay, on election day, on a day of public celebration, or in the case of riot, pestilence, invasion or other public calamity. Such appointment shall be made only for a specified time, and shall be revocable at all times by the commissioner.

b. Such special patrolmen shall be vested with all the powers and privileges and shall perform all the duties of the patrolmen in the regular police department. Each such special patrolman shall wear a badge, to be furnished by the commissioner. In making such appointment, the commissioner shall in no way interfere with the force or lawful command of the sheriff of the county.

ARTICLE XIII

DEPARTMENT OF PLANNING

Section 1301. Department established; planning commission; members; terms.

1302. Organization; employees.

1303. Duties of the department.

1304. Power to zone within five hundred feet of town or village boundary restricted.

§ 1301. Department established; planning commission; members; terms. There shall be a department of county planning, the head of which shall be a county planning commission consisting of ten members, one from each town. The members of the commission shall be appointed by the county executive with the approval of the board of supervisors for terms of five years except that of the members first appointed two each shall be appointed for terms of one, two, three, four and five years respectively. The terms of the members of the Suffolk county planning board shall expire upon the effective date of this charter.

The commissioner of public works and the county comptroller shall be ex-officio members of the county planning commission.

§ 1302. Organization; employees. The planning commission shall select from its own members a chairman and vice-chairman and shall adopt its own rules of procedure and rules for the conduct of the department not inconsistent with the terms of this charter. Within the appropriations therefor and when authorized by the county executive, it may employ such consultants, engineers, technicians, draftsmen, clerical and other employees as may be necessary.

§ 1303. Duties of the department. The department of planning, under the general supervision of the county planning commission shall have all the powers and perform all the duties conferred by law upon duly established county planning boards.

§ 1304. Power to zone within five hundred feet of town or village boundary restricted. No zoning ordinance nor any amendment of a zoning ordinance passed by any town or village in the county after the date on which this charter becomes effective relating to any portion of the said town

or village within five hundred feet of a town boundary or a state park or parkway shall take effect in respect to such portion of said town or village until said ordinance or amendment has been submitted to and approved by the county planning commission. The ordinance or amendment shall be deemed to have been approved unless, within thirty days after the same has been filed with the county planning commission, a resolution disapproving it is adopted by a two-thirds vote of such commission, after a public hearing thereon. The county planning commission shall give at least seven days' prior written notice of such hearing to the clerk of any town or village adjacent to the area which is the subject of said ordinance or amendment or to the state park commission, as the case may be.

ARTICLE XIV

COUNTY TREASURER

Section 1401. Office established.

1402. Powers and duties.

§ 1401. Office established. There shall be a county treasurer who shall be elected from the county at large. His term of office shall be three years from and including the first day of January next following his election.

§ 1402. Powers and duties. The county treasurer, subject to the powers and authority of the board of supervisors, the county comptroller and the county executive, shall:

(1) Have charge of the administration of all the financial affairs of the county, except as otherwise provided in this charter;

(2) Within the appropriations therefor, appoint officers and employees as may be necessary;

[fol. 49] (3) Receive and have custody of all public funds belonging to or handled by the county;

(4) Collect all taxes, assessments, license fees and other revenues of the county or for whose collection the county is responsible, except those payable by law to the county clerk or sheriff;

(5) Deposit all funds coming into his hands in such depositories as may be designated by resolution of the board of supervisors, or if no such resolution be adopted then as designated by the county executive, subject to the requirements of law as to depositories and depositories' undertakings;

(6) Have the custody, investment and management of any sinking funds provided for the payment or redemption of county debts;

(7) Submit to the board of supervisors annually as required by law a complete financial statement containing a general balance sheet for the county, and at such other times as may be required by the board of supervisors;

(8) Perform all the duties required by any law to be performed by the county treasurer, unless such duties shall have been assigned to some other county department or officer.

ARTICLE XV

COUNTY ATTORNEY

Section 1501. Office established; employees.

1502. Powers and duties.

§ 1501. Office established; employees. There shall be a county attorney who shall be appointed by the county executive with the approval of the board of supervisors for the term for which the members of the board of supervisors

were elected. The county attorney shall be a resident of the county, admitted to practice law in this state. The county attorney shall appoint such assistants, officers and employees of his office as may be authorized by the board of supervisors. Within the appropriations therefor and when authorized by the county executive, the county attorney may employ such special counsel as may be necessary.

§ 1502. Powers and duties. The county attorney shall be the attorney and counsel for the county and every agency and office thereof, and shall have charge of all the law business of the county and its agencies. The county attorney shall prosecute and defend all civil actions and proceedings brought by or against the county, the board of supervisors and any officer whose compensation is paid from county funds for any official act, except as otherwise provided by this charter. He shall perform such additional and related duties as may be prescribed by law and directed by the county executive or the board of supervisors.

ARTICLE XVI
SHERIFF

Section 1601. Election.

1602. Powers and duties.

§ 1601. Election. There shall be a sheriff who shall be elected from the county at large. His term of office shall be three years from and including the first day of January next following his election.

§ 1602. Powers and duties. The sheriff shall appoint such deputies, officers and employees of the department as may be authorized by resolution of the board of supervisors or by law. Except where inconsistent with this charter, the sheriff shall have and exercise all the powers

and duties now or hereafter conferred or imposed by any applicable law.

ARTICLE XVII
COUNTY CLERK

Section 1701. Election.

1702. Powers and duties.

§ 1701. Election. There shall be a county clerk who shall be elected from the county at large. His term of office shall be three years from and including the first day of January next following his election.

§ 1702. Powers and duties. The county clerk shall appoint such deputies, officers and employees of the department as may be authorized by resolution of the board of supervisors or by law. Except where inconsistent with this charter, the county clerk shall have and exercise all powers and duties now or hereafter conferred or imposed by any applicable law.

ARTICLE XVIII
DISTRICT ATTORNEY

Section 1801. Election.

1802. Power and duties.

§ 1801. Election. There shall be a district attorney who shall be elected from the county at large. He shall give his whole time to the duties of the office and shall not engage in the private practice of law. His term of office shall be three years from and including the first day of January next following his election.

§ 1802. Powers and duties. The district attorney shall have and exercise all the powers and duties now or hereafter conferred or imposed by any applicable law.

[fol. 50]

ARTICLE XIX

MEDICAL EXAMINER

Section 1901. Office established.

1902. Powers and duties.

1903. Office of coroner abolished.

§ 1901. Office established. The office of the medical examiner is hereby created. Such medical examiner shall be appointed by the county executive with the approval of the board of supervisors for a term of six years. Such county medical examiner shall be a member of the classified civil service. He shall be a physician duly licensed to practice medicine in the State of New York and shall be a qualified pathologist and possess an adequate knowledge of bacteriology and forensic medicine. Within the appropriations therefor and with the approval of the county executive, he shall appoint such deputy medical examiners and other professional and non-professional assistants and employees as may be needed.

§ 1902. Powers and duties. 1. Whenever in the county any person shall die from criminal violence or criminal neglect, or by a casualty, or by suicide, or suddenly when in apparent health, or when unattended by a physician, or in prison, or in any suspicious and unusual manner, the officer in charge of the station house of the county police precinct, police district, agency or department within the county in which such person died, shall immediately notify the office of the county medical examiner and immediately upon receipt of such notification, the county medical ex-

aminer or a deputy medical examiner shall go to the dead body and take charge of the same. Such examiner shall fully investigate the facts concerning the circumstances of the death, taking the names and addresses of as many witnesses thereto as it may be practicable to obtain, and before leaving the premises shall reduce all such facts to writing and thereafter file the same in his office. Such examiner shall take possession of any money or other property which may be found upon the body and deliver the same to the property clerk of the police department having jurisdiction. Such money and property shall be retained until such time as the said property clerk or chief of police deem such money or other property no longer useful in establishing the cause of death or in solving a crime, whereupon such money or other property shall be released to the county treasurer. Nothing herein contained shall prevent the release of such money or other property at any time pursuant to the order of any court having jurisdiction in the premises. If in the opinion of such medical examiner an autopsy is necessary, the same shall be performed by the county medical examiner or a deputy. A detailed description of the findings, written during the progress of such autopsy, and the conclusions drawn therefrom shall be filed in his office. If when the duties of the medical examiner with regard to the body are completed, the body remains unclaimed, the medical examiner shall have authority to make an order for the disposition thereof as a county charge.

2. It shall be the duty of the office of the county medical examiner to keep full and complete records, properly indexed, stating the name, if known, of every person whose body is examined, the place where the body was found, and the date of death, and attach thereto the original report of the medical examiner and the detailed findings of the autopsy, if any. The county medical examiner shall promptly deliver to the district attorney copies of all records relating to every death as to which there is, in his

§ 1802. Powers and duties. The district attorney shall have and exercise all the powers and duties now or hereafter conferred or imposed by any applicable law.

[fol. 50]

ARTICLE XIX

MEDICAL EXAMINER

Section 1901. Office established.

1902. Powers and duties.

1903. Office of coroner abolished.

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§ 1902. Powers and duties. 1. Whenever in the county any person shall die from criminal violence or criminal neglect, or by a casualty, or by suicide, or suddenly when in apparent health, or when unattended by a physician, or in prison, or in any suspicious and unusual manner, the officer in charge of the station house of the county police precinct, police district, agency or department within the county in which such person died, shall immediately notify the office of the county medical examiner and immediately upon receipt of such notification, the county medical ex-

aminer or a deputy medical examiner shall go to the dead body and take charge of the same. Such examiner shall fully investigate the facts concerning the circumstances of the death, taking the names and addresses of as many witnesses thereto as it may be practicable to obtain, and before leaving the premises shall reduce all such facts to writing and thereafter file the same in his office. Such examiner shall take possession of any money or other property which may be found upon the body and deliver the same to the property clerk of the police department having jurisdiction. Such money and property shall be retained until such time as the said property clerk or chief of police deem such money or other property no longer useful in establishing the cause of death or in solving a crime, whereupon such money or other property shall be released to the county treasurer. Nothing herein contained shall prevent the release of such money or other property at any time pursuant to the order of any court having jurisdiction in the premises. If in the opinion of such medical examiner an autopsy is necessary, the same shall be performed by the county medical examiner or a deputy. A detailed description of the findings, written during the progress of such autopsy, and the conclusions drawn therefrom shall be filed in his office. If when the duties of the medical examiner with regard to the body are completed, the body remains unclaimed, the medical examiner shall have authority to make an order for the disposition thereof as a county charge.

2. It shall be the duty of the office of the county medical examiner to keep full and complete records, properly indexed, stating the name, if known, of every person whose body is examined, the place where the body was found, and the date of death, and attach thereto the original report of the medical examiner and the detailed findings of the autopsy, if any. The county medical examiner shall promptly deliver to the district attorney copies of all records relating to every death as to which there is, in his

judgment or that of the deputy medical examiner making the examination, any indication of criminality. All other records shall be open to public inspection as provided in this charter.

3. The medical examiner may employ a qualified physician or physicians to make post mortem examinations and to testify thereon at a compensation to be fixed by the board of supervisors, or if none be fixed, commensurate with the compensation which he would be likely to receive for such service in the county.

§ 1903. Officer of coroner abolished. The office of coroner is hereby abolished and its powers and duties transferred to the medical examiner, except that an elected coroner in office when this charter takes effect shall be permitted to complete the term for which he was elected, serving as a deputy medical examiner.

ARTICLE XX
ELECTIONS

Section 2001. Present laws to continue.

2002. Terms of elective officers; time of election.

2003. Vacancies in elective offices.

§ 2001. Present laws to continue. All elections shall be conducted in the manner provided by law.

§ 2002. Terms of elective officers; time of election.

1. The sheriff, county clerk and district attorney shall continue to be elected for terms of three years.

2. The first county executive elected under this charter shall be elected at the first general election following the adoption of this charter. The term of office of the county

executive shall be four years from and including the first day of January next following his election.

3. The first comptroller elected under this charter shall be elected at the first general election following the adop-
[fol. 51] tion of this charter, except that if the county has an elective county auditor at the time of such adoption, the first comptroller shall be elected at the general election in the last year of the term of said county auditor, or if the office of such auditor becomes vacant before the last year of his term, the next general election thereafter at which the vacancy can be filled by the election of a comptroller. The term of office of the comptroller shall be four years from and including the first day of January next following his election.

4. If the county has an elective county auditor when this charter becomes effective in the county, he shall perform the duties of comptroller, unless a vacancy otherwise occurs, until the expiration of the term for which he was elected county auditor. If the office or the last auditor elected becomes vacant otherwise than by expiration of term, the board of supervisors shall forthwith appoint a comptroller, who shall serve until his successor is elected and has qualified, pursuant to subdivision three of this section.

§ 2003. Vacancies in elective offices. Except as otherwise provided by law, a vacancy occurring in any elective office, otherwise than by the expiration of the term, shall be filled by appointment by the board of supervisors of a resident of the county. Any such appointee shall hold office until and including the thirty-first day of December next succeeding the first general election after the occurrence of such vacancy at which such vacancy can lawfully be filled by election. At such general election the successor shall be elected for the full term provided for such officer.

ARTICLE XXI

MISCELLANEOUS OFFICES AND FUNCTIONS

Section 2101. Hospitals and sanatoria.

2102. Miscellaneous departments, functions and duties.

§ 2101. Hospitals and sanatoria. The governing boards of any hospitals or sanatoria operated by the county shall be and continue as at present organized, with the powers and duties now provided by law. In addition, the county shall have the authority to purchase, establish, build, operate and/or maintain one or more county hospitals for chronic care or otherwise. Supplies and equipment for hospitals and sanatoria except medical supplies and equipment up to five hundred dollars in case of emergency, shall be purchased through the county director of purchasing and that said boards shall in all respects be subject to the budget and other financial provisions of this charter and, further provided, that all contracts in connection with the construction or reconstruction of new buildings or the repair, maintenance or operation of existing buildings, when recommended by said boards shall be advertised and made and the work pursuant thereto done in the same manner as provided in this charter for other county buildings. Vacancies in such boards, by reason of expiration of term, shall be filled by appointment of the county executive, subject to the approval of the board of supervisors, for the term now provided by law. Other vacancies shall be filled in the same manner, but for the unexpired balance of the term only.

§ 2102. Miscellaneous departments, functions and duties. All other offices, departments, boards and commissions of the county government existing when this charter becomes effective in the county, including without limiting the generality thereof, such offices and bodies as commis-

sioner of jurors, board of elections, county sealer, park commission, probation department, mosquito control commission, planning board, fire advisory board and veterans service agency, shall continue with the same authority, rights and duties as now or hereafter provided by law, the continuation of said offices, departments, boards and commissions to be subject to local law and any general or special law applying to such offices and bodies. It is the intention of this charter that such offices and bodies shall continue without general interference except as otherwise provided in accordance with the procedures established by law.

ARTICLE XXII

GENERAL PROVISIONS

Section 2201. Publicity of records.

2202. Compensation not to be diminished during term of office.

2203. Appointive members of boards and commissions; absence from meetings; vacancies.

2204. Authorization of deputies.

2205. Fees not to be retained by officers.

2206. Power to administer oaths and issue subpoenas.

2207. Transfer of records.

2208. Continuation of authority.

2209. Removal.

2210. Petitions for referendum.

§ 2201. Publicity of records. 1. The heads of all departments and the chiefs of each and every bureau thereof shall, with reasonable promptness, furnish to any taxpayer

desiring the same, a true certified copy of any public book, account or paper kept by such department, bureau or officer, or such part thereof as may be demanded, upon payment in advance by the person demanding the same of the fee prescribed by law or as shall be fixed by resolution of the board of supervisors or by local law.

[fol. 52] 2. Except as otherwise provided by law all books, accounts and papers in any department or bureau thereof or in the custody of any officer shall at all times be open to the inspection of any taxpayer, subject to any reasonable rules and regulations in regard to the time and manner of such inspections as such department, bureau or officer may make in regard to the same, in order to secure the safety of such books, accounts, and papers, and the proper use of them by the department, bureau or officer. In case such inspection shall be refused, the taxpayer, on his sworn petition describing the particular book, account or paper that he desires to inspect, may, upon notice of not less than five days to such department, bureau or officer, apply to any justice of the supreme court for an order that he be allowed to make such inspection as such justice shall by his order authorize, and shall specify the time and manner of such inspection.

3. This section shall not apply to the books, papers or records of the district attorney's office, the county attorney's office, the probation officer, or the police department (except as provided by section fifty-one of the general municipal law), or such records as are required by law to be confidential, and in the office of the county medical examiner shall apply only to those records which are open to public inspection as herein provided.

§ 2202. Compensation not to be diminished during term of office. The compensation of any elective officer or officer appointed for a fixed term shall not be diminished during the term for which he was elected or appointed.

§ 2203. Appointive members of boards and commissions; absence from meetings; vacancies. Any appointed member of any board or commission who shall be absent from four consecutive regular meetings of such board or commission, unless excused by resolution thereof, shall be deemed to have vacated his office. Vacancies occurring in such office otherwise than by the expiration of the term shall be filled for the unexpired balance of the term.

§ 2204. Authorization of deputies. The county executive, the comptroller, the treasurer, the county attorney, the medical examiner and such other department heads as may be authorized to do so by the board of supervisors may, by writing filed and recorded in the office of the county clerk, authorize any officer or employee of their respective offices or departments to perform such powers or duties of such officer as shall be designated in such writing without additional compensation. Any such authorization may be revoked at any time by filing a written revocation in the office of the county clerk.

§ 2205. Fees not to be retained by officers. Except as provided in this charter or otherwise by law:

(a) No officer of the county government shall have or receive to his own use any fees, perquisites or commissions or any percentage and all fees, percentages and commissions received by any such officer shall be the property of the county;

(b) All sums received or collected by any department, institution, office or agency of the county, including sums received as above, shall be paid without deduction to the county treasurer at such times and under such conditions as he may prescribe but in no instance less frequently than once a month, and a detailed report, certified to be correct by the head of such department, institution, office or agency shall be made in such form as the comptroller shall pre-

scribe stating when and from whom and for what use such moneys were received.

A person who wilfully certifies to a false statement in such a report shall be guilty of a misdemeanor. No officer or employee of the county shall be entitled to receive any salary so long as there remains in his possession any money belonging to the county other than cashdrawer balances authorized by the comptroller.

§ 2206. Power to administer oaths and issue subpoenas. The board of supervisors, the county executive, the county comptroller, the county treasurer, the county attorney, the county civil service commission and the county medical examiner, and their duly authorized deputies, shall have the power to administer oaths and affirmations and to compel the attendance of witnesses and the production of books and papers, only as the same may be pertinent to the performance of the duties of their respective offices, and any person disobeying a valid subpoena thereof, or who wilfully refuses to make oath or affirmation when requested to do so thereby, shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars or imprisonment for not more than three months, or by both such fine and imprisonment.

§ 2207. Transfer of records. All books, records, papers and accounts of any office, officer or board abolished by this charter shall be transferred at the direction of the county executive to the appropriate office, officer or board as provided in this charter.

§ 2208. Continuation of authority. Unless the same have been abolished under this charter, officers, boards and commissions existing at the time this charter becomes effective are continued and the members thereof shall continue to hold office until the terms for which they shall have been appointed expire. The performance of functions by a de-

partment, office or agency to which they are assigned pursuant to the provisions of this charter shall be deemed [fol. 53] and held to constitute a continuation thereof for the purpose of succession to all rights, powers, duties and obligations attached to such functions at the time of such assignment.

§ 2209. Removal. 1. Any appointed officer may be removed by the board of supervisors, or if appointed by the county executive may also be removed by the county executive with the approval of the board of supervisors, in either case, however, subject to the provisions of subdivision two of this section.

2. No officer appointed for a fixed term shall be removed during his term without written charges and an opportunity to be heard by the board of supervisors.

§ 2210. Petitions for referendum. Whenever in this charter a question is to be submitted to referendum of the electors of the county by petition, such petition shall be verified or authenticated in the manner provided in the election law with respect to designating petitions. All papers severally containing such requests and signed and so verified or authenticated when bound together and offered for filing, shall constitute one petition.

ARTICLE XXIII

APPLICATION OF ACT; WHEN AND HOW OPERATIVE AND EFFECTIVE

Section 2301. Manner of submission of this charter.

2302. Adoption of county charter.

2303. Modification after adoption.

2304. Alternative methods of submission if this charter is not adopted in nineteen hundred fifty-eight.

2305. Term of elective county officials not abridged.

2306. Saving clauses.

2307. Charter to be liberally construed.

2308. Separability clause.

2309. When various provisions of this charter shall take effect.

2310. When this act shall take effect.

§ 2301. Manner of submission of this charter.

1. The charter provided in this act shall be submitted for adoption to the electors of the county at the general election to be held in the year nineteen hundred fifty-eight. Electors residing in the county who are qualified to vote therein for members of the assembly shall be qualified to vote on such question in the election districts in which they severally reside.

2. The board of elections of the county shall cause a notice of the referendum on this charter to be published in one or more newspapers of general circulation in the county for a period of three consecutive weeks immediately preceding the election and may also publish such notice for such periods and in such newspapers as it may determine. The board of elections shall provide the ballots, blanks, supplies and other voting facilities for such referendum. The question shall be submitted, the votes counted, returns made and results canvassed and certified, so far as practicable, in the manner provided by law for the submission in the county of questions decided by the voters of the state; and the board of elections, inspectors and clerks of elections, and other officers shall have and perform the duties imposed on them regarding the submission of such questions. The results shall be canvassed and certified by the board of county canvassers of a general election. The expense of submitting such questions shall be a county charge.

§ 2302. Adoption of county charter. This charter, except as otherwise expressly provided herein, shall become effective and shall be the charter of government for Suffolk county when adopted by a majority of the electors of Suffolk county voting at a general election held in said county. At the time of such general election the question of the adoption of this charter shall be stated as follows: "Shall the county charter for Suffolk county provided by chapter of the laws of nineteen hundred fifty-eight be adopted and become operative in Suffolk county?"

§ 2303. Modification after adoption. This act provides an alternative form of county government for the county of Suffolk in accordance with section two of article nine of the constitution of this state. Subject to and in accordance with the provisions and requirements of section one and section two of article nine of the constitution of this state, the provisions of this act and the form of county government provided by this act may be supplemented and/or modified by adding thereto, at any time, any provision or provisions which might have been adopted originally herein or by deleting or changing at any time any provision or provisions herein contained or hereafter duly added or modified herein, so as to leave this act in a modified form which could have been adopted originally, and the provisions of this act and the form of county government provided herein as thus modified shall, from and after the time it becomes effective, have the force and effect of, and be deemed to be, an alternative form of county government for the county of Suffolk, and shall continue to be known as and may be cited as "The Suffolk County Charter."

§ 2304. Alternative methods of submission if this charter is not adopted in nineteen hundred fifty-eight.

1. If this charter is not adopted at the general election in nineteen hundred fifty-eight, it may be submitted to the

electors of the county for adoption by resolution of the [fol. 54] board of supervisors at any subsequent general election held not less than one hundred twenty days after a copy of such resolution, duly certified by the clerk of the board, shall be filed with the board of elections of the county.

2. If this charter is not adopted at the general election in nineteen hundred fifty-eight, it shall also be submitted to the electors of the county for adoption if a petition requesting its submission and signed by resident electors of the county, qualified to vote at the last preceding general election equal in number to five percent of the total vote cast in such county for the office of the governor at the last general election at which a governor was elected, is filed with the officer or board having jurisdiction of elections in such county not less than one hundred twenty days prior to the general election at which it is to be submitted.

§ 2305. Term of elective county officials not abridged. The term of an office of an elective county official shall not be abridged by reason of the approval of the adoption of this charter or any question submitted to the voters pursuant to this charter. If an elective official is continued in office after his office is abolished, he shall perform such duties during the remainder of his term as may be assigned to him by the county executive.

§ 2306. Saving clauses. 1. Nothing herein shall be deemed to affect, impair or supersede the provisions of the Suffolk county tax act, the Suffolk county improvement act or any local laws of the county except to the extent that they are amended, modified or superseded by this charter.

2. The adoption of the charter herein provided shall not affect or impair:

(1) any pending action or proceeding, civil or criminal, but the same may be prosecuted or defended in the same

manner and with the same effect as though this charter had not been enacted:

(2) any contract, or act done, or offense committed, or right accruing, accrued or required, or liability, or penalty, or forfeiture, or punishment incurred prior thereto, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent as if this charter had not been enacted.

§ 2307. Charter to be liberally construed. This charter shall be liberally construed to effectuate the objects and purposes thereof and the public policy of the state as hereby declared.

§ 2308. Separability clause. If any clause, sentence, paragraph, section or article of this act or the charter provided herein shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or article thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 2309. When various provisions of this charter shall take effect. 1. If the charter provided by this act is adopted in the county pursuant to this act it shall take effect on the first day of January of the year following the election of the county executive as provided in subdivision two of this section.

2. If this charter is adopted pursuant to this act, the election of the county executive shall take place at the general election in the next succeeding odd-numbered year thereafter.

3. Except as provided in section twelve hundred two of this article, the police department shall become activated and function on the first day of January next succeeding the election of the county executive as provided by subdivision two of this section.

§ 2310. When this act shall take effect. This act shall take effect immediately.

STATE OF NEW YORK,
Department of State. *ss*:

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

CARMINE G. DESAPIO,
Secretary of State

[fol. 55] [The Suffolk County Charter has been amended by a 1962 act of the legislature, but the amendment is of no importance here; it creates, subject to the approval of the voters (of at least three contiguous towns) a district court system.]

When the Charter was voted upon by the people in the election held on November 4, 1958, it was adopted by a wide margin.

The result of the voting on the question of the adoption of the charter was as follows:

Town	Whole Number	Yes	No	Balance	Void
Brookhaven	37,940	16,076	5,213	16,651	0
Easthampton	4,166	917	1,570	1,679	0
Riverhead	4,997	1,117	1,930	1,950	0
Shelter Is.	881	134	538	209	0
Southampton	10,071	2,094	4,371	3,605	1
Southold	6,408	1,331	2,364	2,713	0
Islip	44,522	22,569	5,067	18,886	0
Smithtown	12,636	6,025	1,794	4,817	0
Babylon	41,281	19,910	4,488	16,883	0
Huntington	43,015	20,955	6,697	15,363	0
Totals	205,917	91,128	34,032	80,756	1

The complaint states that one of the plaintiffs resides in the Town of Brookhaven, one in the Town of Huntington.

It should be noted that the Yes vote in those two towns alone (ranking third and fourth in population) was more than sufficient to overcome the No vote in *all* towns. The other large population towns of Smithtown, Babylon and Islip overwhelmingly voted in favor of the charter.

[fol. 56] Thus, the very people who, according to the plaintiffs, are the ones whose votes have the least individual weight on the board of supervisors, were responsible for the adoption of the charter which determines the method of voting on that board. It is §203 of the charter which the complaint seeks to have declared unconstitutional.

It should be pointed out here that except for the provision of the county executive to have a vote in the case of a tie, the method of voting on the board would be the same if there were no charter.

In the case of counties generally (other than those comprising the City of New York, as to which the County Law does not apply), the provisions as to voting is as follows:

1. "The supervisors of the several cities and towns in each county, when lawfully convened, shall constitute the board of supervisors of the county." [County Law §150.]

2. "Whenever in this chapter or other general, special or local law, the board of supervisors is authorized or required to act, and no proportion of the voting strength is otherwise prescribed," [the Local Finance Law, for example, requires more than a majority vote in certain instances] "such action shall be taken by the affirmative vote of a majority of the total membership of the board. * * *" [County Law, §153(4).]

[fol. 57] While other counties than Suffolk have an alternative or charter form of government, only one, Nassau, which has had a charter and a district court system for many years, has a weighted vote.

Incidentally, it should be pointed out, in view of the reference to supervisors of cities in §150 of the County Law, that there are no cities in Suffolk County.

As a resident, taxpayer and voter of the Town of Babylon, and as the supervisor from that town, I do not feel, and never have, that my vote on the board or the votes of the plaintiffs or of the residents of the five western towns is impaired by the disparity in population among the townships.

I do not believe, considering the voting records of the board of supervisors, considering that the supervisors are primarily town officers and devote most of their time to town affairs and to the business and problems of the special districts therein, considering the rationality of state policy, the remedy the people have to amend the Constitution (and that they did not vote to call a constitutional convention as recently as 1957), the recent vote on the adoption of the Suffolk County Charter, and other factors, that the disparity of population among the towns constitutes invidious discrimination.

[fol. 58] I know of no suggestions for a weighted vote, or of increasing the number of supervisors in certain towns, in Suffolk county prior to the decision of the Supreme Court of the United States in *Baker* v. *Carr*.

Prior to the institution of this action and subsequent to the *Baker* case, one supervisor has suggested a weighted vote; there were doubtless political overtones involved.

At a meeting of the board on July 23, 1962, a resolution was offered by the supervisor of the Town of Huntington (ranking third in population) for the enactment of a local law which would have provided a weighted vote.

A copy of the pertinent part of the proceedings follows on the next two pages.

[fol. 59] "Supervisor Flynn offered the following resolution which was not seconded:

RESOLUTION NO. 342—1962, DIRECTING THAT A PUBLIC HEARING BE HELD UPON THE QUESTION OF THE ADOPTION OF LOCAL LAW NO. 3—1962.

WHEREAS, there has been duly presented and introduced at a meeting of this Board of Supervisors held on this date, a proposed Local Law entitled, "A LOCAL LAW AMENDING SECTION 203 AND SECTION 206 OF THE SUFFOLK COUNTY CHARTER"; now, therefore, be it

RESOLVED, that a public hearing be held on the adoption and enactment of said proposed Local Law by this Board on the 13th day of August, 1962 at 12:00 o'clock noon, prevailing time, at the Supervisors' Room, Suffolk County Center, Riverhead, New York, and at least six (6) days notice of such hearing shall be given by posting and publishing notice thereof as required by law.

Dated: July 23, 1962

LOCAL LAW NO. 3—1962, OF THE COUNTY OF SUFFOLK AMENDING SECTIONS 203 AND 206 OF THE SUFFOLK COUNTY CHARTER.

A Local Law Amending Sections 203 and 206 of the Suffolk County Charter.

Be It Enacted by the Board of Supervisors of the County of Suffolk as follows:

SECTION 1) Legislative Finding. It is hereby found and declared that a situation has arisen in Suffolk County whereby a vast concentration of population now exists in five of the ten townships. As a result of this concentration an inbalance of representation on this Board has resulted so that the overwhelming majority of the people of the county are unable to control the management of their political and financial affairs at the county level. A continuation of this state of affairs is wholly contrary to the basic tenets upon which our nation is founded; tends to retard the progress and orderly growth of the county and

given rise to a lack of respect for our form of county government. It is further found and declared that an equitable solution to this state of facts may be found in an amendment to the Suffolk County Charter to provide for a weighted vote by the supervisors based on size of the population which they represent.

SECTION 2) Pursuant to the powers vested in the Board of Supervisors by article nine of the constitution of the State of New York, article 6A of the county law and sections 201 and 202 and 2303 of the Suffolk County Charter are hereby amended to provide that the supervisor of each town shall cast a vote as member of the board of supervisors in proportion to the size of the population of the town from which he is elected based upon the federal census of 1960.

SECTION 3) The voting power of each supervisor shall be one vote for each five thousand persons or fraction thereof [fol. 60] in excess of twenty five hundred persons as shown by the federal census of 1960 except that the supervisor of the town of Shelter Island shall cast one vote.

SECTION 4) In order to effectuate the provisions of section 2 and 3 hereof, section 203 of the Suffolk County Charter shall be amended to read as follows:

Section 203. Voting: quorum. Each supervisor shall cast a vote weighted in the following proportion: Babylon twenty-eight; Brookhaven twenty-two; East Hampton two; Huntington twenty-five; Islip thirty-five; Riverhead three; Shelter Island one; Smithtown ten; Southampton five; Southold three. A majority of the whole number of the members of the board shall constitute a quorum. Except as otherwise provided by law, local laws and resolutions shall be adopted by the majority of the total voting power of all the supervisors. In case of a tie vote on any matter at any meeting of the board of supervisors the county executive shall have a casting vote, provided, however, that he shall not have a vote as to any local law or resolution

which provides a new form of government, for the county or changes the voting strength of the supervisor, or which changes the location of the county seat.

SECTION 4) In order to effectuate the provisions of sections 1 and 2 hereof section 206 of the Suffolk County Charter shall hereafter read as follows:

Section 206. Approval of local laws and resolutions by county executive. No local law or resolution, other than a resolution relating to procedure, shall take effect until it has been submitted to the county executive for this approval. If so approved, it shall be effective immediately upon his approval. If such local law or resolution is not returned by the county executive to the board within ten days of its submission to him with a statement of his reasons for not approving the same, such local law or resolution shall be deemed to be approved as of said tenth day. Any local law or resolution returned to the board with the disapproval of the county executive shall nevertheless become effective forthwith if upon further consideration it is passed by the board of supervisors by affirmative vote of a majority of the total voting power of all of the supervisors. After a lapse of ten days from the date a local law or resolution has been returned to the board of supervisors with the disapproval of the county executive it shall become effective forthwith if upon further consideration it is passed by the board of supervisors by affirmative vote of a majority of the total voting power of all of the supervisors.

SECTION 5) This law and the revision of the Suffolk County Charter contained therein shall become effective on January 1, 1963."

I, the undersigned, Deputy Clerk of the Board of Supervisors of Suffolk County, do hereby certify that the foregoing is a true and correct excerpt from the Minutes of the Regular Meeting of the Suffolk County Board of Supervisors held on July 23, 1962, with regard to proposed Resolution No. 342—1962, offered by Supervisor Robert J.

Flynn of the Town of Huntington, entitled, "Directing That a Public Hearing be Held Upon the Question of the Adoption of Local Law No. 3—1962".

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the Board of Supervisors of the County of Suffolk this 18th day of September, 1962.

(Seal)

/s/ RUTH S. BUYS
Deputy Clerk of the Board

[fol. 61] Although all members of the board were present, no one seconded the motion to adopt the resolution.

In and of itself a weighted vote would not solve the problems. A fairer means of representation, if that is what is sought, would be so to divide the county into towns that each town had approximately the same area and the same number of people. Local facilities, such as town halls, local bonded indebtedness, special districts already carved out and functioning—these and a multitude of practical difficulties rule out such action. For while the area can be equalized and stabilized, there is nothing to stop people from moving into one town in greater numbers than to another, and there is no reason to think that will not be the case for many, many years to come.

And when people move in they know—or at least are presumed to know—how they are to be governed and represented.

Before commenting generally on the subject of apportionment in concluding, I should like to refer specifically to certain allegations made in the complaint.

First: paragraph Seventh states: "The defendants, in their collective capacity as the Board of Supervisors of Suffolk County, pursuant to various laws and statutes, and by long-standing custom and practice in the State of New York, are required to exercise, and do exercise, certain powers in addition to those set forth in paragraph Sixth hereof, as officers of, and for and in behalf of, the State of New York."

I categorically deny that. I believe it was asserted to set forth in the complaint an allegation that state officers [fol. 62] were involved to support the plaintiffs' application for a statutory three-judge court. I further believe that the only basis for the statement is that the county makes certain reports to the state.

It should be borne in mind in this connection that local government is a creature of the legislature, and has only such powers as the legislature bestows. The general purpose of local government is to provide for better and more efficient administration of certain functions of government. Local officials are just that, and while they sometimes are obliged (for they have duties as well as powers) to do certain things, that obligation does not make them state officers. True, some officials are rather directly concerned with state functions (e. g., the district attorneys, sheriffs) but supervisors certainly are not.

Secondly: paragraph Thirteenth states: "The present discriminatory arrangement is contrary to the prevailing philosophy of government in the United States * * *."

I deny that. Certainly it is not contrary to the prevailing practice. Moreover, *every* basis of representation, including population, gives one citizen's vote greater value than another's. That is: every device of government works to give different weights to different ideas and people. Any newly imposed procedure or established procedure takes from some interest and gives to another. There *is* [fol. 63] justification, in our democratic heritage, in logic and in the practical requirements of government, for other than equal numerical representation. Indeed, the prevailing doctrines and practices throughout history and around the world incorporate and defend principles such as the representation of communities *per se*, the representation of interests of functional groups, such as business, unions, associations, the interest of minorities and the interest of efficient administration.

Finally: paragraph Nineteenth alleges that "Section 203 of the Charter was deliberately contrived to deprive the

plaintiffs and others similarly situated of their liberty and property without due process of law and the equal protection of the laws, as prescribed by the Fourteenth Amendment of the Constitution of the United States."

I deny that, and as one who voted for the necessary "home rule" resolution, required of the board of supervisors as a prerequisite to the passage of the charter act, I know that is not so.

The situation of which the plaintiffs complain is not strictly one of apportionment. We are dealing, in a sense, with districting. But the federal constitution does not provide for government below the state level, nor guarantee a citizen in Alaska that his vote at the county level shall be as effective as the vote at the county level of a citizen in Texas. And if it does not guarantee that as to [fol. 64] the citizens of different states, how can it be said to do so for different towns in the same state—even within the same county?

The state legislature could do away with all local government and manage local affairs itself or by the delegation of powers to the executive branch.

The United States District Court for the Southern District of New York in *WMCA* v. *Simon,* in which deponent is a substituted defendant, (61 Civ. 1559, August 17, 1962) held there was no invidious discrimination in the manner in which the state legislature was chosen under the state constitution and the statutes implementing it.

And finally, there have been no actions brought in the New York state courts on the plaintiffs' theory and there are no judicial decisions in that jurisdiction on the subject.

By reason of all of these considerations it is respectfully submitted that the plaintiffs' complaint should be dismissed.

Arthur M. Cromarty

Sworn to before me this 15th day of October, 1962.

Cornelia C. Keogh, Notary Public, State of New York, No. 52-2093890, Qualified in Suffolk County, Term Expires March 30, 1963.

[fol. 65]

EXHIBIT "1" TO AFFIDAVIT

NEW YORK STATE CONSTITUTION

ARTICLE IX—LOCAL GOVERNMENTS

§1. [Counties; organization and government; restrictions on legislature with respect to laws affecting.]

(a) There shall be in each county, except in a county wholly included in a city, a board of supervisors, or other elective governing body, to be composed of such members and elected in such manner and for such period as is or may be provided by law.

(b) The legislature shall provide by law for the organization and government of counties. No law which shall be special or local in its terms or in its effect, or which shall relate specially to one county only, shall be enacted by the legislature unless (a) upon the request of the board of supervisors or other elective governing body of each county to be affected, or, in any county having an alternative form of government providing for an elective county executive officer, upon the request of the board of supervisors or other elective governing body with the concurrence of such executive officer of each county to be affected; provided that if said executive officer disapproves or fails to sign a request for such proposed law within ten days of its approval by the governing body, such body may reconsider said proposed law and if passed by such governing body by at least two-thirds of all of the members thereof, the request by the executive officer shall not be required; or (b) upon a certificate of necessity by the governor to the legislature reciting the facts of such necessity existing in the county to be affected and the concurrence of two-thirds of the members elected to each house of the legislature.

(c) The legislature may authorize boards of supervisors or other elective governing bodies of two or more counties

Juvenile Code of Arizona
§§8-201 to 8-239

Article 1.
GENERAL PROVISIONS

§ 8-201. Definitions

In this chapter, unless the context otherwise requires:

1. "Juvenile court" means the superior court when exercising its jurisdiction over neglected, dependent, incorrigible or delinquent children, or children accused of crime under the age of eighteen years.

2. "Judge" means judge of the juvenile court.

3. "Child" means a person under the age of eighteen years.

4. "Neglected child" includes:

(a) A child abandoned by its parents, guardian or custodian.

(b) A child who lacks proper parental control by reason of the fault or habits of the parent, guardian or custodian.

(c) A child whose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical and surgical care, or other care necessary for its health, morals or well-being.

(d) A child whose parent, guardian or custodian neglects or refuses to provide special care made necessary by its mental condition.

(e) A child who is found in a disreputable place or who associates with vagrant, vicious or immoral persons.

(f) A child who engages in an occupation, occupies a position, or invites conditions dangerous to life or limb or injurious to the health or morals of himself or others.

(g) A child who is subjected to cruel and inhuman treatment and shows the effect of being physically mistreated.

5. "Dependent child" includes a child who is homeless or destitute, or without proper support or care through no fault of his parent or guardian, and a child who lacks proper care by reason of the mental or physical condition of his parent, guardian or custodian.

6. "Delinquent child" includes:

(a) A child who has violated a law of the state or an ordinance or regulation of a political subdivision thereof.

(b) A child who, by reason of being incorrigible, wayward or habitually disobedient, is uncontrolled by his parent, guardian or custodian.

(c) A child who is habitually truant from school or home.

(d) A child who habitually so deports himself as to injure or endanger the morals or health of himself or others.

• • • • •

§ 8-202. Jurisdiction of juvenile court

A. The superior court shall have exclusive original jurisdiction in all proceedings and matters affecting neglected, dependent, incorrigible or delinquent children, or children accused of crime under the age of eighteen years,

and when exercising that jurisdiction shall be known as the juvenile court.

B. In a county having more than one judge of the superior court, the judges shall designate, for a period of not less than one year, one of their number to serve as judge of the juvenile court.

* * * * *

§ 8-203. Commissioner; power

In the absence of a judge from his county, the court commissioner shall make necessary orders for the temporary care, custody and control of children.

* * * * *

§ 8-204. Probation officers

A. The judge presiding in the juvenile court may appoint a chief probation officer, a deputy probation officer and such additional deputy probation officers, not exceeding one for each fifty persons on probation, as he deems necessary. In counties of the first class the judge may appoint necessary office assistants. The probation officers, deputies and assistants shall be discreet persons of good moral character.

B. In a county having a population of fifty thousand or more, a person shall not be appointed chief probation officer until he has passed a competitive examination touching child welfare, juvenile delinquency and dependency and other subjects associated with social science, prescribed and given by a committee of three members to be appointed by the judge of the juvenile court. The members of the committee shall be persons engaged in and acquainted with educational and welfare work and practices.

C. The probation officer shall have the authority of a peace officer. He shall:

1. Look after the interests of neglected, delinquent and dependent children of the county.

2. Make investigations and file petitions.

3. Be present in court when cases are heard concerning children and represent their interests.

4. Furnish the court information and assistance as it may require.

5. Assist in the collection of sums ordered paid for the support of children.

6. Perform other acts ordered by the court.

D. The probation officer shall give bond for the faithful performance of his duties, in such sum as the court may determine, and the cost thereof shall be paid by the county.

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§ 8-205. Salaries

The salary of the chief probation officer of the juvenile court in each county, his deputies, assistants and all other employees, shall be fixed by the judge presiding in the juvenile court, with the approval of the board of supervisors, and shall be a county charge.

• • • • •

§ 8-206. Venue

A. The venue of proceedings in the juvenile court shall be determined by the county of the residence of the child, or the county where the neglect, dependency or delinquency obtains or is committed.

B. Where the residence of the child and the situs of the neglect, dependency or delinquency are in different counties, invoking proceedings in one county shall bar proceedings in the others.

* * * * *

ARTICLE 2.

PROCEDURE

§ 8-221. Arrest of child for violation of law

A. A peace officer, other than the probation officer, who arrests a child under the age of eighteen years shall forthwith notify the probation officer, and shall make such disposition of the child as the probation officer directs.

B. This article shall not be construed to prohibit a peace officer from taking into custody a child who is found violating a law or ordinance, who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals or welfare unless immediate action is taken.

* * * * *

§ 8-222. Initiation of proceedings

A. Any person may, and a peace officer or probation officer shall, give to the juvenile court information in his possession that a child is delinquent, neglected or dependent. Thereupon the court shall make preliminary inquiry to determine whether the interest of the public or the child requires further action. When practicable, the inquiry shall include a preliminary investigation of the home and environment of the child, his previous history, his physical, mental and moral well-being, and the circum-

stances of the offense committed, if any. If the court determines that formal jurisdiction should be acquired, it shall authorize a petition to be filed invoking its jurisdiction in such form as it may prescribe.

B. The powers of the court may be exercised upon the filing of a petition by any resident of the county, or any peace officer or probation officer, alleging that a child is neglected, dependent or delinquent, and needs the care and protection of the court, without alleging the facts.

* * * * *

§ 8-223. Child charged with crime

When a child under the age of eighteen years is charged with the commission of a crime or violation of an ordinance before a magistrate or justice of the peace, the magistrate or justice of the peace shall certify that the child is so charged, and shall transmit the records of the case to the clerk of the superior court, and thereupon the juvenile court shall exercise jurisdiction.

* * * * *

§ 8-224. Subpoena of parent or guardian; witnesses; contempt; attachment

A. When the jurisdiction of the juvenile court has attached, the court may make orders necessary for compelling the production of the child and the attendance of the parent, guardian and other persons having custody or control of the child. If a person other than the parent or guardian of the child is cited to appear, the parent or guardian, or both, shall be notified of the pendency of the case and of the time and place appointed by personal service, except as otherwise provided in this article.

B. The clerk of the court shall issue subpoenas and process to compel the attendance of necessary witnesses at a hearing involving a child. The process may be served by an officer of the court, probation officer or officer authorized to serve process in a civil action. No attendance or mileage fee shall be paid a witness, unless expressly authorized by the judge, in which event the fees allowed shall be as prescribed in civil actions. If the judge is satisfied that it is impracticable to serve personally a citation or other notice to appear, he may order service by registered mail or by publication, or both, and service in either manner twenty-four hours prior to the time fixed in the citation for the return thereof, if so ordered by the judge, is sufficient.

C. If a person cited or subpoenaed fails to appear, without reasonable cause, he may be proceeded against for contempt of court.

D. If the citation cannot be served, or the parties served fail to obey it, or when it appears to the judge that the service will be ineffectual or the welfare of the child requires that he shall be brought forthwith into the custody of the court, an attachment may be issued against the parent or guardian or against the child.

• • • • •

§ 8-225. Custody of child pending hearing

A. Pending final disposition, the child shall be subject to the order of the court and may be permitted to remain in the control of his parents, guardian or person having his custody, or the probation officer, or he may be detained in a place provided by state or county authorities, or by

an association or agency, public or private, for the care of delinquent, neglected or dependent children.

B. A dependent and neglected child shall be placed in the home of a maternal or paternal relative whenever possible, providing the home and the ability of the relative to provide proper care is approved by the court.

• • • • •

§ 8-226. Detention home; separate custody

A. The board of supervisors shall maintain a detention home separate and apart from a jail or lockup in which adults are confined, which shall be under the charge of a person of good moral character, where children within the provisions of this article shall, when necessary before or after trial, be detained.

B. A child, pending a hearing, shall not be placed in an apartment, cell, place of confinement, court room or vehicle or transported in company with adults charged with or convicted of crime.

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§ 8-227. Supervision of detention home

The juvenile court shall supervise the detention home, and shall appoint the person to have charge thereof. The court shall appoint a visiting board of three members to serve without pay to inspect the detention home not less than once every ninety days. The visiting board shall make a report to the court of the condition and operation of the detention home, with such recommendations as it deems advisable, which shall be filed with the clerk of the court.

• • • • •

§ 8-228. Effect of adjudication; use as evidence

A. An adjudication by the juvenile court upon the status of a child shall not operate to impose any civil disability, nor shall a child be deemed a criminal by reason thereof. An adjudication by the juvenile court shall not be deemed a conviction, nor shall a child be charged with or convicted of a crime in any court, except where the juvenile court refuses to suspend criminal prosecution.

B. The disposition of a child or of evidence given in the juvenile court shall not be admissible as evidence against the child in any proceeding in another court, nor shall such disposition or evidence disqualify a child in a civil service application, examination or appointment.

• • • • •

§ 8-229. Hearings; record

The hearing of any matter involving a child shall be informal, and the judge shall, in chambers, without the intervention of a jury, inquire into the facts, order a medical or mental examination, if advisable, and make a record of the name, age and place of birth of the child and the names of his parents.

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§ 8-230. Hearing by referee

A. When it appears to the court, in a proceeding affecting a neglected, dependent or delinquent child, that the interests of the child will be served by an examination and hearing before a referee, the judge may direct that the proceeding be so heard, and shall appoint a referee to hear the matter and report his conclusions and recommendations to the court, in writing, together with all papers relating to the matter.

B. A hearing before the juvenile court upon the report of a referee shall be allowed to the parent, guardian or custodian of the child concerned, upon the filing of a request therefor within two days after conclusion of the hearing before the referee. If a hearing by the court is not requested, the conclusions and recommendations of the referee, when confirmed by an order of the court, shall become the judgment of the court.

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§ 8-231. Disposition and commitment; support; transfer of records; removal from state

A. The judge shall make such order for the commitment, custody and care of the child as the child's welfare and the interests of the state require. He may commit the child:

1. To the care of his parents, subject to supervision of the probation officer.

2. To a probation officer, subject to such conditions as the judge may impose.

3. To a suitable institution.

4. To an association willing to receive him.

5. To a reputable citizen of good moral character.

6. To an appropriate public or private agency authorized to care for children.

7. To a suitable school.

8. To the state industrial school.

9. To an institution provided for girl juvenile offenders.

10. To maternal or paternal relatives, provided they are physically and financially able to provide proper care.

B. The juvenile court may make an order directing the parent of a child to contribute to his support such sum as the judge may determine, or may allow a reasonable sum for the support of the child at the expense of the county.

C. When the court commits a child to an institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child.

D. The juvenile court may permit removal from the state of a neglected, dependent or delinquent child, by the person to whom his care may be temporarily awarded, upon such recognizance, with or without sureties, as may satisfy the court, obligating the person to produce the child when required by the court.

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§ 8-232. When child may not be committed; medical examination

A. A delinquent child under the age of twelve years shall not be committed to the state industrial school, or to an institution for girl juvenile offenders, unless, after the care given the child by probation, the court finds that the interests of the child and the welfare of the community demand his commitment, nor shall a neglected or dependent child be committed to any such school.

B. Before commitment, every juvenile offender shall be given a medical examination, which shall include an x-ray

of the lungs and a blood test for syphilis. A record thereof shall be made, including medical findings based thereon, and if the juvenile offender is thereafter committed to an institution, the record shall accompany his commitment papers.

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§ 8-233. Guardianship

When the juvenile court awards a dependent child to the care of an association, board or institution, public or private, or to an individual, the child shall, unless otherwise ordered, become the ward and be subject to the guardianship of that association, board, institution or individual. The association, board, institution or individual shall have authority to place the child in a family home, with or without indenture, and may be made party to any proceedings for the legal adoption of the child, and may appear in court where the proceedings are pending and consent to adoption. Consent of the association, board or institution, public or private, or the individual to whom the court has awarded the dependent child, shall be sufficient to authorize the court, in its discretion, to include guardianship of the estate of the child. As amended Laws 1956, Ch. 149, § 1.

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§ 8-234. Report of custodian

When a child is committed to the care of any person, the matter shall be assigned by the juvenile court to a probation officer, who shall require a report quarterly, or oftener if the court so orders, from the person to whom the child has been committed, reporting the child's condition and welfare. The report shall be filed with the court.

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§ 8-235. Physical and mental care

A. When a child concerning whom a petition has been filed in the juvenile court appears to be in need of medical or surgical care, the court may order the parent, guardian or custodian to provide treatment for the child in a hospital or otherwise. If the parent, guardian or custodian fails to provide the care as ordered, the court may, after notice, enter an order therefor, and the expense, when approved by the court, shall be a county charge. The court may adjudge that the person required by law to support the child pay part or all the expense of treatment.

B. If it appears that a child concerning whom a petition has been filed in the juvenile court is mentally defective or mentally disordered, the court may commit the child to an institution authorized by law to receive and care for such children.

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§ 8-236. Jurisdiction; length of commitment; placement

A. When jurisdiction has been acquired by the juvenile court of a child, the child shall continue under the jurisdiction of the court until he becomes twenty-one years of age, unless sooner discharged, except that from the time of admittance to the state industrial school or to an institution for girl juvenile offenders, a child shall be subject to the exclusive control of the board of directors of state institutions for juveniles until his absolute release.

B. A commitment of a child shall not extend beyond the minority of the child, and commitments to the state industrial school or an institution for girl juvenile offenders shall

be for the term of the child's minority, unless sooner discharged by the board of directors of state institutions for juveniles.

C. The court, in making orders for the commitment or adoption of a child, shall place it, as far as possible, in the custody of persons having the same religious belief. When possible the child shall be placed in an appropriate family home and become a member of the family by adoption or otherwise.

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§ 8-238. Destruction of record

Upon the expiration of the period of probation or following the expiration of two years after the discharge of a child from the institution to which he may have been committed, the judge of the juvenile court shall order the clerk to destroy the records of the proceeding, unless it appears that prior to the expiration of the prescribed period the child has been convicted of an offense under the laws of this or another state. The superintendent of the institution shall notify the clerk of the court which committed the child when two years have expired after his discharge.

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§ 8-239. Cooperation

County, city and town officials and departments shall render assistance and cooperation within their power which may further the objects of this article. An institution or agency to which the juvenile court commits a child shall give the court or an officer appointed by it such information concerning the child as the court or the officer may require.

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